

~~1244~~  
No.

3417

1245

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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HOWARD J. PROFFITT ~~and WILLIAM E. HILL,~~  
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,  
Defendant in Error.

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Transcript of Record.

Upon Writ of Error to the United States District  
Court, for the Southern District of Cal-  
ifornia, Southern Division.

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FILED

NOV 7 1919

F. D. MONGKTON,  
CLERK



No.

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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italics* the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys.**

For Plaintiffs in Error:

FRANK E. DOMINGUEZ and MILTON M. COHEN, Esqs., 703 California Building, Los Angeles, California.

WILL H. WILLIS, Esq., 637 Bryson Building, Los Angeles, California.

For Defendant in Error:

JOHN ROBERT O'CONNOR, Esq., United States Attorney, Federal Building, Los Angeles, California.

GORDON LAWSON and WILLIAM F. PALMER, Esqs., Assistant United States Attorneys, Federal Building, Los Angeles, California.

IN THE DISTRICT COURT OF THE  
UNITED STATES, SOUTHERN DISTRICT OF  
CALIFORNIA, SOUTHERN DIVISION.

.....

UNITED STATES OF	)	No. 1721 Criminal.
AMERICA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	CITATION ON
	)	WRIT OF ERROR.
HOWARD J. PROFFITT,	)	
et al,	)	
Defendants.	)	

.....

United States of America,  
Southern District of California,  
Southern Division, - - - SS.

To the United States of America, and to ROBERT O'CONNOR, U. S. Attorney for the Southern District of California, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States, for the Southern District of California, Southern Division, wherein HOWARD J. PROFFITT is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Los Angeles, California, in said District, this 17th day of June, 1919.

Oscar A. Trippet,  
United States District Judge for  
the Southern District of California.

.....  
Assistant United States Attorney.

[Endorsed]: ORIGINAL No. 1721 CRIMINAL  
In the United States District Court Southern District  
of California Southern Division UNITED STATES  
OF AMERICA, *Plaintiff vs.* HOWARD J. PROF-  
FITT, et al., *Defendants* CITATION ON WRIT OF  
ERROR Received Copy of within Citation this 16th  
day of June 1919 W. F. Palmer Asst. U. S. Atty.  
for Plaintiff FILED JUN 17 1919 *Chas. N. Wil-*  
*liams, Clerk* Ernest J. Morgan, *Deputy* FRANK E.  
DOMINGUEZ MILTON M. COHEN Attorneys for  
Defendant, HOWARD J. PROFFITT.

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT  
OF CALIFORNIA, SOUTHERN DIVISION.

.....  
UNITED STATES OF ) No. 1721 Criminal.  
AMERICA, )  
 )  
 ) Plaintiff, )  
 )  
-vs- ) WRIT OF ERROR.  
 )  
HOWARD J. PROFFITT and )  
WILLIAM E. HILL, )  
 )  
 ) Defendants. )

UNITED STATES OF AMERICA - - ss.

The President of the United States of America, to the Honorable Judge of the District Court of the United States, for the Southern District of California, Southern Division, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in said District Court, before you, between Howard J. Proffitt, plaintiff in error, and the United States of America, defendant in error, a manifest error has happened to the great damage of said Howard J. Proffitt, plaintiff in error, as by his complaint appears:

We being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid and all things concerning the same to the United States District Court of Appeals for the Ninth District, together with this Writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals, may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 17th day of June, 1919.

(Seal)

Chas. N. Williams

Clerk of the United States District of California, Southern Division.

.....

The within Writ of Error is hereby on this 17th day June 1919 ~~lodged~~ allowed.

Oscar A. Trippet,  
Judge

[Endorsed]: ORIGINAL No. 1721 CRIMINAL In the United States District Court Southern District of California Southern Division UNITED STATES OF AMERICA, *Plaintiff vs.* HOWARD J. PROFFITT, et al., *Defendants* WRIT OF ERROR FILED JUN 17 1919 Chas. N. Williams, Clerk Ernest J Morgan, *Deputy* FRANK E. DOMINGUEZ MILTON M. COHEN Attorneys for Defendant, HOWARD J. PROFFITT.

Viol. Sec. 37 FPC. Conspiracy to violate Act Jan. 17, 1914.

"Act Jan. 17, 1914. Smuggling smoking opium."

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

At a stated term of said Court, begun and holden at the City of Los Angeles, within the Southern

Division of the Southern District of California, on the second Monday of January, in the year of our Lord one thousand nine hundred and nineteen:

The Grand Jurors of the United States of America, duly chosen, selected and sworn, within and for the Division and District aforesaid, on their oath present:

That HOWARD J. PROFFITT, WILLIAM E. RILL, WILLIAM FRANK EDMONSON, LEE TONG, alias HOM HONG, and JOHN DOE SMITH, alias "COCKEYB" SMITH, hereinafter called defendants, whose full and true names are, and the full and true name of each is, other than as herein stated, to the Grand Jurors unknown, each late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the 1st day of January, in the year of our Lord one thousand nine hundred and nineteen, and continuously thereafter up to and including the date of the filing of this indictment, at the City of Los Angeles, County of Los Angeles, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, did knowingly, willfully, unlawfully, corruptly, fraudulently and feloniously conspire, combine, confederate and agree together, and with divers other persons whose names are to the Grand Jurors unknown, to commit an offense against the United States, to-wit: the offense of receiving, concealing, buying, selling and facilitating the transportation, concealment and sale of opium prepared for smoking, which said opium prepared for smoking then and there had been imported into the United States from a foreign

country, said foreign country and the place of importation are to the Grand Jurors unknown, after the first of April, 1909, contrary to law, the said defendants then and there knowing that the said opium prepared for smoking then and there had been so imported into the United States contrary to law; which said offense is defined by the Act of Congress approved January 17, 1914, and entitled, "AN ACT REGULATING THE MANUFACTURE OF SMOKING OPIUM WITHIN THE UNITED STATES AND FOR OTHER PURPOSES", the quantities of said opium prepared for smoking so to be received, concealed, bought and sold, and the transportation, concealment and sale of which was so to be facilitated, and a more particular description of the containers thereof are to the Grand Jurors unknown.

#### OVERT ACT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That thereafter, and on or about the eighth day of February, 1919, the said LEE TONG alias HOM HONG did knowingly, wilfully, unlawfully, corruptly, fraudulently and feloniously, and in furtherance of the said conspiracy, and to effect the object thereof, draw from the Bank of Italy at the corner of Temple and Spring Streets, in the City of Los Angeles, County of Los Angeles, within the Division and District aforesaid, and within the jurisdiction of this Honorable Court, the sum of Four Thousand Dollars (\$4000) for the then and there purpose of purchasing from the said

JOHN DOE SMITH, alias "COCKEYE" SMITH,  
opium prepared for smoking,

OVERT ACT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That the said LEE TONG, alias HOM HONG, did knowingly, wilfully, unlawfully, corruptly, fraudulently and feloniously, and in furtherance of the said conspiracy, and to effect and accomplish the object thereof, on or about the 8th day of February, 1919, go to the City of Pasadena, County of Los Angeles, within the Division and District aforesaid, and within the jurisdiction of this Honorable Court, to the store of the Quong Wong Company, near the corner of California and Fair Oaks Streets, in the said City of Pasadena, to meet the said JOHN DOE SMITH, alias "COCKEYE" SMITH, for the then and there purpose of purchasing about fifty (50) cans of opium prepared for smoking of the sizes commonly called 5-tael and 4- $\frac{1}{8}$ -tael.

OVERT ACT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That thereafter, on or about the 21st day of February, 1919, the said WILLIAM FRANK EDMONSON did knowingly, wilfully, unlawfully, fraudulently and feloniously, and in furtherance of the said conspiracy, and to effect and accomplish the object thereof, have in his possession while driving in an



automobile on the streets of the City of Los Angeles, County of Los Angeles, within the Division and District aforesaid, and within the jurisdiction of this Honorable Court, a can of opium prepared for smoking, of the size commonly called four and one-eighth tael.

OVERT ACT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That thereafter, on or about the 21st day of February, 1919, the said WILLIAM FRANK EDMONSON did knowingly, wilfully, unlawfully, corruptly, fraudulently and feloniously, and in furtherance of the said conspiracy, and to effect the object thereof, have in his possession at the Sherman Hotel, Room 312, at 314 West Fourth Street, in the City of Los Angeles, County of Los Angeles, within the Division and District aforesaid, and within the jurisdiction of this Honorable Court, one can of opium prepared for smoking, of the size commonly called five-tael.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

SECOND COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That HOWARD J. PROFFITT, WILLIAM E. HILL, WILLIAM FRANK EDMONSON, LEE TONG, alias HOM HONG, and JOHN DOE SMITH,

alias "COCKEYE" SMITH, hereinafter called the defendants, whose full and true names are, and the full and true name of each is, other than as herein stated, to the Grand Jurors unknown, each late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the 8th day of February, in the year of our Lord one thousand nine hundred and nineteen, within the Division and District aforesaid, and within the jurisdiction of this Honorable Court, did knowingly, wilfully, unlawfully, fraudulently and feloniously receive, conceal, and facilitate the transportation and concealment of opium prepared for smoking, that is to say: the said defendants did, at the time and place aforesaid, take the said opium prepared for smoking in an automobile to a certain point in the said City of Los Angeles, said point is to the Grand Jurors unknown, and then and there did secrete and hide the said opium prepared for smoking, the quantity of said opium prepared for smoking so received and concealed, and the transportation and concealment of which was so facilitated, was contained then and there in about fifty (50) cans of the sizes commonly called 5-tael and 4- $\frac{1}{8}$ -tael, the exact quantity of the said opium prepared for smoking, and the exact number of said cans is to the Grand Jurors unknown, which said opium prepared for smoking then and there had been imported into the United States from a foreign country, the said foreign country and the place of importation are to the Grand Jurors unknown, after the 1st day of April, 1909, contrary to law, the said defendants then

and there knowing that the said opium prepared for smoking then and there had been so imported into the United States contrary to law.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

THIRD COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That HOWARD J. PROFFITT, WILLIAM E. HILL, WILLIAM FRANK EDMONSON, LEE TONG alias HOM HONG, and JOHN DOE SMITH, alias "COCKEYE" SMITH, hereinafter called defendants, whose full and true names are, and the full and true name of each is, other than as herein stated, to the Grand Jurors unknown, each late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the 21st day of February, in the year of our Lord one thousand nine hundred and nineteen, at the City of Los Angeles, County of Los Angeles, within the Division and District aforesaid and within the jurisdiction of this Honorable Court, did knowingly, wilfully, unlawfully, fraudulently and feloniously receive and conceal, and facilitate the transportation and concealment of opium prepared for smoking, that is to say: the said defendants did at the time and place aforesaid take, and cause to be taken, in an automobile the said opium from the Sherman Hotel, 314 West Fourth Street in the said City of Los Angeles, to a certain point in that part of

the City of Los Angeles commonly called "Chinatown", the exact point is to the Grand Jurors unknown, which said opium prepared for smoking then and there was contained in one can of the size commonly called 4- $\frac{1}{8}$ -tael, which said opium prepared for smoking then and there had been imported into the United States from a foreign country, the said foreign country and the place of importation are to the Grand Jurors unknown, after the 1st day of April, 1909, contrary to law, and the said defendants then and there knowing that the said opium prepared for smoking then and there had been so imported into the United States contrary to law.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

#### FOURTH COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That HOWARD J. PROFFITT, WILLIAM E. HILL, WILLIAM FRANK EDMONSON, LEE TONG alias HOM HONG, and JOHN DOE SMITH, alias "COCKEYE" SMITH, hereinafter called defendants, whose full and true names are, and the full and true name of each is, other than as herein stated, to the Grand Jurors unknown, each late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the 21st day of February, in the year of our Lord one thousand nine hundred and nineteen, at the City of Los Angeles, County of Los An-

geles, within the Division and District aforesaid, and within the jurisdiction of this Honorable Court, did knowingly, wilfully, unlawfully, fraudulently and feloniously receive and conceal, and facilitate the transportation and concealment of, opium prepared for smoking, that is to say: the said defendants did, at the time and place aforesaid, take and cause to be taken the said opium prepared for smoking to the Sherman Hotel, 314 West Fourth Street, in said City of Los Angeles, and did place, and cause to be placed, in the said Sherman Hotel the said opium prepared for smoking, which said opium prepared for smoking then and there was contained in one can of the size commonly called 5-tael, and which said opium prepared for smoking then and there had been imported into the United States from a foreign country, said foreign country and the place of importation are to the Grand Jurors unknown, after the 1st day of April 1909, contrary to law, and the said defendants then and there knowing that the said opium prepared for smoking then and there had been so imported into the United States contrary to law.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

Robert O'Connor

United States Attorney.

Gordon Lawson

Assistant United States Attorney.

[Endorsed]: Form No. 195. No. 1721 Crim.  
UNITED STATES DISTRICT COURT, Southern

*District of California Southern Division. THE UNITED STATES OF AMERICA vs. HOWARD J. PROFFITT, et al. INDICTMENT Viol. Sec. 37 FPC. Conspiracy. "Act Jan.17,1914. Smuggling smoking opium. A true bill, GEBittinger Foreman. FILED APR 18 1919 Chas. N. Williams, Clerk. Ernest J. Morgan, Deputy*

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AT A STATED TERM, to-wit: The January A. D., 1919 Term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 21st day of April, in the year of our Lord One Thousand Nine Hundred and Nineteen.

PRESENT:

The Honorable BENJAMIN F. BLEDSOE,  
District Judge.

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs	)	No. 1721 Crim.
	)	
Howard J. Proffitt, et al.	)	
	)	
Defendants.	)	

This cause coming on at this time for the Arraignment and Plea of the defendants; Gordon Lawson, Esq., Assistant U. S. Attorney, counsel for the Plaintiff, and Will H. Willis, Esq., counsel for defendants

Proffitt and Hill, also R. Kittrelle, Esq., counsel for Lee Tong, alias Hom Hong, present in open Court. Defendants Proffitt and Hill appeared in person on bail. Defendants Howard J. Proffitt and William E. Hill were arraigned and waived the reading of the indictment, and stated that their true names are as set forth in the indictment. On motion of Will H. Willis, Esq., it is by the Court ORDERED that said defendants be allowed to Wednesday, the 23rd day of April, 1919, to demur to said indictment and to present memorandum of points and authorities. On motion of counsel, it is further ordered that this cause be continued to Monday, the 28th day of April, 1919 for entry of plea of said defendants.

Defendant William Frank Edmonson appeared in person on bail without attorney, stated that his true name is William Franklin Edmonson. Good cause appearing it is ordered that this cause be continued to Monday, the 28th day of April, 1919, for further arraignment and plea of said defendant.

On motion of R. Kittrelle, Esq., counsel for defendant Lee Tong, Alias Hom Hong, who is not now present in Court, it is ORDERED that this cause be continued to Monday, April, 1919, for arraignment and plea.

AT A STATED TERM, to-wit: The January A. D., 1919 Term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the

City of Los Angeles, on Monday the 28th day of April, in the year of our Lord, One Thousand Nine Hundred and Nineteen.

## PRESENT:

The Honorable OSCAR A. TRIPPET, District Judge.

United States of America,	)	
	)	
Plaintiff,	)	
	)	No. 1721 Crim.
vs	)	
	)	
Howard J. Proffitt, et al.	)	
	)	
Defendant.	)	

This cause coming on at this time for the plea of defendants Howard J. Proffitt and Wm. E. Hill; for the further arraignment and plea of Wm. Frank Edmonson; and for the arraignment and plea of Lee Tong, alias Hom Hong, said defendants all present in court on bail together with their counsel W. H. Dehun, Esq., representing Messrs. Cohen & Willis, Claude Morton, Esq., representing Guy Eddy, Esq., R. Kittrell, Esq., and Ralph Dominguez, Esq., Gordon Lawson, Esq., Assistant U. S. Attorney, counsel for the plaintiff.

The defendant Lee Tong, alias Hom Hong being duly called and arraigned, states to the Court that his true name is as contained in the indictment. Defendant Win. F. Edmonson also stated to the Court that his true name is as contained in the indictment. All the defendants being required to plead to the indictment on file against them each waives the reading of the indict-



ment and enters his plea of Not Guilty, and it is by the Court ORDERED that the pleas now interposed by each and all of the defendants be and the same are hereby entered of record.

It is also by the Court ordered that the demurrer of defendants Proffitt and Hill to the Indictment be and the same is submitted.

It is further by the Court ORDERED that this cause be and the same is continued to the 6th day of May, 1919 for trial.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

.....

THE UNITED STATES OF AMERICA, Plaintiff, -vs- HOWARD J. PROFFITT, et al., Defendants. DEMURRER TO INDICTMENT.

Come now the defendants Howard J. Proffitt and William E. Hill, and for themselves and for no other defendants demur to the indictment herein on the following grounds:

I.

That said indictment does not, nor does any count or paragraph thereof, state facts sufficient to constitute a

punishable offense, or any offense or crime against the laws or statutes of the United States of America.

II.

That said indictment does not substantially conform to, or comply with, the requirements of Section 950 of the Penal Code of the State of California, the state of which this court is holden.

III.

That said indictment does not substantially conform to or comply with the requirements of Section 951 of said Penal Code.

IV.

That said indictment does not substantially conform to or comply with the requirements of Section 952 of said Penal Code.

V.

That more than one offense is charged in said indictment except as provided in Section 954 of the Penal Code of the State of California, the state of which this court is holden.

VI.

That said indictment is not direct or certain as regards the particular circumstances of the offense attempted to be charged, and that said circumstances are necessary to be alleged in order to constitute a complete offense.

That said indictment is not direct or certain sufficiently to inform the defendants herein of the particular circumstance of the offense with which they are attempted to be charged.

That said uncertainty consists in the following matters:

(a) That it cannot be ascertained from the second count of said indictment how these demurring defendants did on or about the 8th day of February, 1919, or at any other time, in the Southern Division of the Southern District of California, or at any other place, receive or conceal or did facilitate in the transportation or concealment of opium.

(b) That it cannot be ascertained from a reading of the allegations in the third count of the indictment how these demurring defendants did, on or about the 21st day of February, 1919, or at any other time, in the Southern Division of the Southern District of California, receive or conceal or did facilitate in the transportation or concealment of opium.

(c) That it cannot be ascertained from a reading of the allegations in the fourth county of the indictment how these demurring defendants did on or about the 21st day of February, 1919, at the City of Los Angeles, *Count* of Los Angeles, State of California, receive or conceal or facilitate in the transportation or concealment of opium.

## VII.

That second count in the said indictment does not conform to Section 37 of the Penal Code of the United States in that there is no statement or attempt at statement of any overt act in so far as these demurring defendants are concerned.

## VIII.

That third count in the said indictment does not conform to Section 37 of the Penal Code of the United States in that there is no statement or attempt at statement of any overt act in so far as these demurring defendants are concerned.

## IX.

That fourth count in the said indictment does not conform to Section 37 of the Penal Code of the United States in that there is no statement or attempt at statement of any overt act in so far as these demurring defendants are concerned.

## X.

That the grand jury by which the indictment was found had no legal authority to inquire into the offense charged.

## XI.

That second count in said indictment is bad, defective, and *duplitious*; that said second count is defective for the reason that there is a misjoinder of offenses; that more than one offense is charged in said second count of said indictment.

## XII.

That third count in said indictment is bad, defective, and *duplitious*; that said third count is defective for the reason that there is a misjoinder of offenses; that more than one offense is charged in said third count of said indictment.

## XIII.

That fourth count in said indictment is bad, defective, and *duplitious*; that said fourth count is defective

for the reason that there is a misjoinder of offenses; that more than one offense is charged in said fourth count of said indictment.

WHEREFORE, the defendants Howard J. Proffitt and William E. Hill pray that this demurrer be sustained and that said indictment be dismissed as to them.

Frank Dominguez M Cohen Wm. Willis  
Claire Woolwine

Attorneys for Defendants Howard J.  
Proffitt and William E. Hill.

I hereby declare that the demurrer offered in the above entitled action on behalf of the defendants Howard J. Proffitt and William E. Hill is not presented for the purpose of delay but that the same is presented for the reason that counsel for said defendants believe that the points are well taken in law.

Frank E Dominguez  
Attorney for said defendants.

[Endorsed]: 1721 Crim. ORIGINAL IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. THE UNITED STATES OF AMERICA, Plaintiff, -vs- HOWARD J. PROFFITT, et al., Defendants. DEMURRER TO INDICTMENT. Gordon Lawson ass't U.S. Atty FILED APR 22 1919 at 55 min. past 4 o'clock P.M. CHAS. N. WILLIAMS, Clerk Murray C. White Deputy. MILTON M. COHEN, 703 California Building, Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

---o-o-o---

UNITED STATES OF AMERICA, Plaintiff, v. HOWARD J. PROFFITT, et al, Defendants. No. 1721 CRIM. DEMAND FOR SEPARATE TRIALS.

Now come the defendants Howard J. Proffitt and William E. Hill and for themselves and no other defendants demand separate trials in the above entitled cause. Said demand will be made upon the files in said action and the minutes of the Court.

Dated this 2nd day of May, 1919.

Frank EDominguez Milton M. Cohen. Attorneys for defendants Hill and Proffitt.

[Endorsed]: ORIGINAL No. 1721 Crim. IN THE United States District Court IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA ...Division United States of America Plaintiff vs. Howard J. Proffitt et al Defendant Demand for Separate Trials Received copy of the within this 2 day of May 1919 Gordon Lawson Ass't U. S. Att'y FILED MAY 2 1919 Chas. N. Williams, Clerk Ernest J.Morgan Deputy Milton M. Cohen 703 CALIFORNIA BUILDING PHONE BROADWAY 2626 LOS ANGELES, CAL. Attorney for Defendants

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

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UNITED STATES OF	)	
AMERICA,	)	
	)	
Plaintiff,	)	
	)	No. 1721 Crim.
v.	)	DEMAND FOR BILL
	)	OF PARTICULARS.
HOWARD J. PROFFITT,	)	
et al,	)	
Defendants.	)	

Now come the defendants Howard J. Proffitt and William E. Hill and for themselves and no other defendants demand from the plaintiff in the above entitled cause a Bill of Particulars. Said Bill of Particulars is demanded for the reason that the defendants have no knowledge or information concerning the matter set forth in the indictment and they are without means of securing details or information; and that such information, if any exists, are now in the hands and possession of the plaintiff; that the defendants cannot prepare their defense or safely proceed to trial unless furnished with a Bill of Particulars showing in what regard or in what manner they have infringed any law of the United States of America.

Dated this 2nd day of May, 1919.

Frank E. Dominguez  
Milton M. Cohen  
Attorneys for defendants  
Proffitt and Hill.

[Endorsed]: No. 1721 Crim. IN THE United States District Court IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA ..... Division United States of America *Plaintiff vs.* Howard J. Proffitt et al *Defendants* Demand for Bill of Particulars *Received copy of the within this 2 day of May 1919* Gordon Lawson Ass't U. S. Att'y FILED MAY 2 1919 Chas. N. Williams, Clerk Ernest J. Morgan *Deputy* Milton M. Cohen 703 CALIFORNIA BUILDING PHONE BROADWAY 2626 LOS ANGELES, CAL. *Attorney for Defendants*

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AT A STATED TERM, to-wit: The January A. D., 1919 Term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday the 2nd day of May, in the year of our Lord, One Thousand Nine Hundred and Nineteen.

PRESENT:

The Honorable OSCAR A. TRIPPET, District Judge.

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs	)	No. 1721 Crim.
	)	
Howard J. Proffitt, et al.	)	
	)	
Defendant.	)	





Proffitt and Wm. E. Hill heretofore submitted to the Court for its consideration and decision, be and the same is hereby overruled. And thereafter, exceptions to the ruling of the Court were allowed.

AT A STATED TERM, to-wit: The January A. D., 1919 Term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday the 27th day of May, in the year of our Lord, One Thousand Nine Hundred and Nineteen.

PRESENT:

The Honorable OSCAR A. TRIPPET, District Judge.

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs	)	No. 1721 Crim.
	)	
Howard J. Proffitt, et al.	)	
	)	
Defendant.	)	

This cause coming on this day for trial before the Court and a jury to be impanelled, Gordon Lawson, Esq., and Wm. F. Palmer, Esq., Assistant United States Attorneys, counsel for the plaintiff, the defendants Howard J. Proffitt and Wm. E. Hill and their Counsel Frank E. Dominguez, Esq., Milton E. Cohen, Esq., and Will H. Willis, Esq., the defendant Wm. F. Edmondson and his counsel Guy Eddie, Esq., and the defendant Lee Tong and his counsel R. Kittrelle, Esq.,

all present in open Court. Edward de St. Maurice, an official shorthand reporter of the testimony and proceedings present and acting as such.

On the motion of Guy Eddie, Esq., it is by the Court ORDERED that Claude Morton, Esq., be and he is hereby associated with him as counsel.

At this time with the permission of the Court, the defendant Wm. Frank Edmonson changes his plea of not guilty heretofore entered herein to that of Guilty, which plea now interposed by the defendant is ordered entered herein. On motion of Gordon Lawson, Esq., it is by the Court ORDERED that the same be continued to the 16th day of June, 1919, at the hour of 2 o'clock P. M., for the imposing of sentence.

Yon Chung Hong an official interpreter being duly called is at this time sworn to interpret Chinese into English and English into Chinese as may be required of him.

Both sides having announced ready and the Court having ordered that the trial proceed; thereupon the following twelve (12) names of petit jurors were duly drawn, called and sworn on voir dire, to-wit: Wm. F. Kerr, Geo. F. Pennebaker, Morris Ellis, Grant E. McCarthy, Joseph Boylson, F. F. Bazzenni, Noah B. Dewey, Fred Albert Barman, G. H. Welch, R. M. Seeley, J. W. Jump and Chauncy E. Hartwell and said jurors having been duly examined for cause by counsel for the respective parties and the Court and passed and Geo. F. Pennebaker and R. M. Seeley having been peremptorily challenged by counsel for the defendant and by the Court excused; the names of the following

named petit jurors were drawn from the box, to-wit: Thomas C. Bundy and E. L. Eldredge, and said jurors having been sworn on voir dire and examined by respective parties and the court and passed for cause; and said jurors now in the box having been accepted by counsel for the respective parties are thereupon sworn as jurors to try the cause, and said jury so impanelled and duly sworn consisting of the following named jurors, to-wit:

- |                      |                         |
|----------------------|-------------------------|
| 1. Wm. F. Kerr       | 7. Noah B. Dewey        |
| 2. Thomas C. Bundy   | 8. Fred Albert Barman   |
| 3. Morris Ellis      | 9. G. H. Welch          |
| 4. Grant E. McCarthy | 10. E. L. Eldredge      |
| 5. Joseph Boylson    | 11. J. W. Jump          |
| 6. F. F. Bazzenni    | 12. Chauncy E. Hartwell |

NOW, at the hour of 11:20 o'clock A. M., the Court having duly admonished the jurors that during the progress of this trial that they are not to speak to other persons about the cause, nor permit other persons to speak to them about the same, and that until this cause is given them for consideration, under instructions of the Court, they are not to speak to each other about the same, nor anything in connection therewith, a recess is taken until the hour of 11:35 o'clock A. M. Now, at the hour of 11:35 o'clock A. M. court having reconvened and all being present as before and the Court having announced that all the jurors are present and all being present the trial is proceeded with.

At this time, R. Kittrelle, Esq., counsel for defendant Lee Tong asks permission of the Court for said defendant Lee Tong to change his plea of Not Guilty

heretofore entered herein to that of Guilty, which is by the Court granted. It is thereupon by the Court ORDERED that the plea of Guilty now interposed by the defendant Lee Tong be and the same is hereby entered herein. On motion of Gordon, Esq., counsel for the plaintiff it is by the Court Ordered that the same be continued to the 16th day of June, 1919, at the hour of 2 o'clock P. M., for the imposing of the sentence.

Gordon Lawson, Esq., counsel for the plaintiff makes an opening statement of the cause to the Court and Jury.

At this time upon the motion of Frank E. Dominguez, Esq., counsel for the defendants Proffitt & Hill it is by the Court ORDERED that all witnesses be excluded from the Courtroom except when testifying and admonishes them that they are not to converse about the trial amongst themselves nor other persons.

Now, at the hour of 11:50 o'clock A. M. a recess is taken until the hour of 2 o'clock P. M., the Court giving the jury the usual admonition. Now at the hour of 2:00 o'clock P. M., court having reconvened, counsel and shorthand reporter being present as before and the Court having announced that the jurors are present and all being present, the trial hereof is proceeded with.

Woo Hay being duly called and sworn testifies on behalf of the plaintiff and in connection with the testimony offers in evidence the following named exhibit which was admitted and ordered filed, to-wit:

Plaintiff's "Ex. 1" receipt to Bank of Italy for \$4000.00 dated 2/10/19;

Lee Tong being duly called and sworn testifies on behalf of the plaintiff and in connection with the testimony plaintiff offers in evidence for identification the following named exhibits, to-wit:

Plaintiff's "Ex. 2, for identification", can of opium (5 tael) marked for identification;

Plaintiff's "Ex. 3, for identification", can of opium (4- $\frac{1}{8}$  Tael) marked for identification.

Now at the hour of 3:33 o'clock P. M., after duly admonishing the jury, a recess is taken until the hour of 3:43 o'clock P. M. Now at the hour of 3:43 o'clock P. M. Court having reconvened and all being present as before and the court having announced the jurors present and all being present, the trial hereof is proceeded with.

Plaintiff's witness Lee Tong resumes the stand on behalf of the plaintiff.

Now at the hour of 4:25 o'clock P. M., the Court having given the jury the usual admonition this cause is by the Court continued to Wednesday, May 28, 1919 at the hour of 10:00 o'clock A. M., for further trial before the Court and jury, until which time the jurors herein are excused.

On motion of Gordon Lawson, Esq., Assistant U. S. Attorney, counsel for the plaintiff, and good cause appearing therefor, it is by the Court ORDERED that the defendant William E. Hill be taken into custody by the U. S. Marshal.

AT A STATED TERM, to-wit: The January A. D.,  
1919 Term of the District Court of the



Plaintiff's witness Wong Wing resumes the stand and testifies further on behalf of the plaintiff.

Now, at the hour of 12:00 o'clock M. the Court duly admonished the jury and a recess is taken until the hour of 2:00 o'clock P. M. until which time the said jurors are excused; Now at the hour of 2:00 o'clock P. M. court having reconvened and all being present as before and the court having announced the jurors as present and all being present the trial hereof is proceeded with.

Billy Wong Tong, Wm. Teddy Neville, Chas. A. Jones, D. McD Jones and Geo. M. Littlejohn each being duly called and sworn testify on behalf of the plaintiff.

D. McD. Jones is recalled and testifies further on behalf of the plaintiff.

Charles Henry Jarvis being duly called and sworn testifies on behalf of the plaintiff;

At this time in connection with the testimony of the above named witnesses plaintiff offers in evidence exhibits Nos. 2 and 3 heretofore marked for identification, and which are at this time admitted and ordered filed.

Now, at the hour of 3:10 o'clock p.m., after duly admonishing the jury, a recess is taken until the hour of 3:20 o'clock P. M. Now, at the hour of 3:20 o'clock P. M., court having reconvened and all being present as before and the court having announced the jury as present and all being present, the trial hereof is proceeded with.



Wm. Frank Edmonson and Oscar S. Sellier each being duly called and sworn testifies on behalf of the plaintiff.

Now, at the hour of 4:27 o'clock P. M., the court having given the jury the usual admonition this cause is by the Court continued to Thursday, May 29, 1919 at the hour of 10:00 o'clock A. M., for further trial before the Court and a jury, until which time the jurors herein are excused.

At this time counsel for the defendant Wm. E. Hill moves the court to admit the defendant Hill to bail, which motion is opposed by the United States Attorney and after argument by all parties, the Court continued the matter for further argument.

AT A STATED TERM, to-wit: The January A. D., 1919 Term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Thursday, the 29th day of May, in the year of our Lord, One Thousand Nine Hundred and Nineteen.

PRESENT:

The Honorable OSCAR A. TRIPPET, District Judge.

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs	)	No. 1721 Crim.
	)	
Howard J. Proffitt, et al.	)	
	)	
Defendant.	)	

This cause coming on at this time for further trial before the Court and a jury heretofore impanelled, all parties being present as before and the Court having announced the jury as present and all being present, the trial hereof is proceeded with.

After further argument by the Court and counsel, it is ordered that the defendant Wm. E. Hill be released from the Custody of the United States Marshal upon his giving bond for his appearance for trial in the sum of \$10,000.00 to be conditioned and given as security for his good behaviour and his keeping the peace as provided in Sec. 270 Judicial Code and it is further ORDERED that the present bond of \$1000 be and the same is hereby exonerated.

Mrs. George S. Fisher, Cyrus D. Rhodes, James McKain and Gertrude Moran each being duly called and sworn testify on behalf of the plaintiff

The plaintiff rests with the privilege of calling its witness Mrs. Ethel Laietsky, who is sick, when she is able to come into Court.

Frank E. Dominguez, Esq., for the defense makes an opening statement to the Court and jury.

Roy B. Holmes being duly called and sworn testifies on behalf of the defendant.

Now, at the hour of 11:25 o'clock A. M., after duly admonishing the jury a recess is taken until the hour of 11:35 o'clock A. M. Now, at the hour of 11:35 o'clock A. M., court having reconvened and all being present as before the trial hereof is proceeded with.

Defendant's witness Roy B. Holmes resumes the stand and testifies further on behalf of the defendant. In connection with the testimony plaintiff offers in evidence the following named exhibit which was admitted and ordered filed, to-wit:

Plaintiff's "Ex. 4", Repair Record Card, Roy B. Holmes' Garage;

Now, at the hour of 12:15 o'clock P. M., the Court having given the jury the usual admonition this cause is by the Court continued to Tuesday, June 3, 1919 at the hour of 10:00 o'clock A. M., for further trial before the Court and jury, until which time the jurors herein are excused.

It is further by the Court ORDERED that this cause be continued to 3:00 o'clock P. M., this day for argument as to the admissibility of certain evidence.

AT A STATED TERM, to-wit: The January A. D., 1919 Term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday the 3rd day

of June, in the year of our Lord, One Thousand Nine Hundred and Nineteen.

PRESENT:

The Honorable OSCAR A. TRIPPET, District Judge.

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs	)	No. 1721 Crim.
	)	
Howard J. Proffitt, et al.,	)	
	)	
Defendant.	)	

This cause coming on at this time for further trial before the Court and a jury heretofore impanelled, all parties being present as before and the court having announced the jury as present and all being present, the trial hereof is proceeded with.

Ethel Laietsky being duly called and sworn testifies on behalf of the plaintiff.

Roy B. Holmes, recalled and testifies further on behalf of the defendants.

P. H. Burgess, George K. Home, and Claudia R. Proffitt each being duly called and sworn testify on behalf of the defendants.

Now, at the hour of 11:35 o'clock A. M., after duly admonishing the jury a recess is taken until the hour of 11:45 o'clock A. M., now, at the hour of 11:45 o'clock A. M. court having reconvened and all being present as before the trial hereof is proceeded with.

Claudia R. Proffitt is recalled and testifies further on behalf of the defendants.

U. S. McIntosh and Beulah Porter Hill each being duly called and sworn testify on behalf of the defendants.

Now, at the hour of 12:25 o'clock P. M., the Court duly admonished the jury and a recess is taken until the hour of 2:00 o'clock P. M. until which time the said jurors are excused; Now, at the hour of 2:00 o'clock P. M., court having reconvened and all being present as before and the court having announced the jurors as present and all being present the trial hereof is proceeded with.

C. G. Stadfield, Hamilton Forline, and Edward L. Menier each being duly called and sworn testify on behalf of the defendants. In connection with the testimony defendant offers in evidence the following named exhibits which were admitted and ordered filed, to-wit: Defendant's "Ex. A", 3 job slips of the Roy B. Holmes Garage;

Defendant's "Ex. B, C, D, E, F, & G", being job slips of the Roy B. Holmes Garage;

Defendant's witness Edward L. Menier being recalled testifies as plaintiff's witness;

Edward D. Zehner, David S. Larimer, Edwin A. Bradley, Charles A. Whitehead, Paul J. Braud, Henry W. Mallmann, Herbert A. Squire, E. B. Giles, Roscoe L. Cannon and Albert A. Kendrick each being duly called and sworn testify as character witnesses on behalf of the defendant.

Defendant at this time offers in evidence for identification only, the following named exhibit, to-wit:

Defendant's "Ex. for identification, No. H" Doctor's certificate as to condition of Tom Ingraham.

Westley Austin, William D. Sutton and Howard J. Proffitt each being duly called and sworn testify on behalf of the defendants.

A. W. Saline being duly called and sworn testifies on behalf of the defendants.

Howard J. Proffitt being recalled testifies further on his own behalf.

Now, at the hour of 5:00 o'clock P. M., the Court having given the jury the usual admonition this cause is by the Court continued to Wednesday, the 4th day of June, 1919 at the hour of 10:00 o'clock A.M., for further trial before the Court and jury, until which time the jurors herein are excused.

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DEFENDANTS' PROPOSED INSTRUCTION  
NO. 1

You are further instructed that you are the sole judges of the credit to be given to the testimony of the different witnesses, and that you are not bound to believe anything to be a fact merely because a witness states it to be so—provided you believe, from the evidence, that such witness is mistaken, or has knowingly testified falsely.

You are further instructed that you are the exclusive judges of the credibility of the witnesses that have testified and that you have the right to determine,

from their character and conduct, from the appearances of the witnesses on the stand, their manner of testifying, their apparent candor, fairness and intelligence, their relation to the parties, their bias or impartiality, the strength or weakness of their recollection, and from all other surroundings appearing on the trial, which witnesses are worthy of credit, and to give credit accordingly. A witness false in one part of his testimony is to be distrusted in others; that is to say, the jury may reject the whole testimony of a witness who has wilfully sworn falsely as to a material point; and the jury being convinced that witness has stated what was untrue, not as the result of mistake or inadvertence, but wilfully and with the design to deceive, must treat all with distrust and suspicion unless they shall be convinced notwithstanding the base character of the witness, that he has in other particulars sworn to the truth.

You are further instructed that counsel as well as the court have the right under the law to comment on the facts disclosed by the evidence, but you are not bound to be influenced by anything which counsel or the court may argue, you being the exclusive judges of the credibility of the witnesses, and in this regard you may, in your discretion, disregard what has been argued to you concerning questions of fact, that being entirely and solely your exclusive right, for after all, it is for you to

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 1 (Cont'd)

finally determine just what conclusions should be drawn from the facts as you hear the same from the witnesses, and the law which the court will give you.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 2.

You are instructed that while you are permitted to consider and even to convict a defendant of a crime against the United States upon the testimony of an accomplice, yet you are further instructed that it is your duty to consider with great care and circumspection the testimony of an accomplice or co-defendant and, if you are not satisfied beyond a reasonable doubt concerning their testimony, considering their interests also in the prosecution, considering that they have already plead guilty to the indictment, and they having nothing further to lose by their testimony, it is your duty to give the defendants Hill and Proffitt the benefit of the doubt and acquit them.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 3.

You are further instructed that, even though you believe that on February 9, 1919, at Pasadena, one of the defendants, Lee Tong, alias Hom Hong, was robbed of his money by the defendant, "Cockeye" Smith, another defendant, yet unless you are further satisfied beyond all reasonable doubt that the defendants Proffitt and Hill were concerned and interested in said robbery, you would not be justified in per-



mitting that evidence to influence your mind in the least degree against the defendants.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 4.

The rule is that where circumstantial evidence is used for the purpose of proving the charge of conspiracy, first, that the hypothesis of the delinquency or guilt of the defendants charged in the indictment should flow naturally from the facts proven, and be consistent with them all; second, that the evidence must be such as to exclude every reasonable hypothesis but that of the guilt of the defendants of the offense imputed to them, or in other words, the facts proven must all be consistent with and point to their guilt only, and must be inconsistent with innocence.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 5

Conspiracy is an unlawful and corrupt combination or agreement or confederation entered into knowingly between two or more persons by concert of action, to accomplish some criminal or unlawful purpose, or some lawful purpose by criminal or unlawful means. In this case the charge is a conspiracy to accomplish a criminal act, to wit, the violation of the statutes relating to the possession, transportation, etc., of opium contrary to the laws of the United States.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 6.

A criminal combination or conspiracy going to make up conspiracy is the gist of the offense charged against

the defendants on the first count, and you must first be satisfied by the evidence beyond a reasonable doubt that the agreement, combination or conspiracy as set out in the indictment was in fact made, formed or entered into by the defendants or some two or more of them. Though this agreement need not be a formal agreement between the parties, yet it must be actual and real, and its existence must be established to your satisfaction beyond a reasonable doubt.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 7

If you believe from the evidence that any one or more of the defendants did not know that the things, or any of the things, which it is alleged they conspired to do, were in violation of a Federal law, you must acquit such defendant or defendants of the charge of conspiracy; and if you have a reasonable doubt from all the evidence or from a lack thereof, whether or not one or more of the defendants had such knowledge, you must resolve that doubt in favor of such defendant or defendants and acquit him or them of said conspiracy charge.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 8.

The court instructs the jury that an alibi simply means that the accused was at another place at the time the crime charged is alleged to have been committed and, therefore, could not have committed it. All of the evidence should be carefully considered by

you and if the evidence on this subject, considered with all the other evidence, is sufficient to raise a reasonable doubt as to the guilt of the defendant or defendants, you should acquit him or them. The accused is not required to prove an alibi beyond a reasonable doubt, or even by a preponderance of evidence; it is sufficient to justify an acquittal if the evidence on that point raises a reasonable doubt of his presence at the time and place of the commission of the crime charged, if you find that a crime was committed, and you will understand, also, that the attempt of the accused to prove an alibi does not shift the burden of proof from the prosecution, but that the prosecution is bound to prove his presence beyond a reasonable doubt.

The court further instructs the jury that the burden of proving the presence of the defendants, or either of them, at the time and place of the alleged offense as mentioned in the indictment, devolves upon the Government, and the Government must prove beyond a reasonable doubt that they were present at the time of the alleged commission of the overt acts. It does not devolve upon the defendants to prove that they were not present. So that if, after a full and fair consideration of all the facts and circumstances in evidence, whether arising from the Government's evidence or that adduced by the defendants, you have a reasonable doubt as to whether defendants were at the place of the alleged crime at the time of its commission, or were in another place, you are bound to give the defendants the benefit of such doubt and acquit them.

The court instructs the jury that the defense in this case is what is known in law as an alibi; that is, that the defendants were not present at the time, to wit, February 9, 1919, and place,

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 8 (Cont'd).

Pasadena, the place of the commission of the overt act as charged in the indictment, but that they were at that time at another and different place. As to this defense, you are instructed that it is not necessary for defendants to prove an alibi to your satisfaction, beyond a reasonable doubt, nor by a preponderance of the evidence, but if, after full and fair consideration of all the facts and circumstances in evidence, you entertain a reasonable doubt as to whether or not the defendants were present at the time and place of the commission of the offense charged in the indictment, if such offense has been committed by anyone, it will be your duty to give the defendants the benefit of such doubt and acquit them.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 9.

The court instructs the jury that one of the defenses interposed by the defendants in this case is what is known as an alibi, that is, that the defendants were at another place at the time of the commission of the crime. The court instructs the jury that such defense is as proper and legitimate if proven as any other and all evidence bearing upon that point should be carefully

considered by the jury. If, in view of all the evidence, the jury have a reasonable doubt as to whether the defendants were in some other place when the crime was committed, they should give the defendants the benefit of the doubt and find them not guilty. As regards the defense of an alibi, the jury are instructed that the defendants are not required to prove that defense beyond a reasonable doubt to entitle them to an acquittal—it is sufficient if the evidence raises a reasonable doubt of their presence at the time and place of the commission of the crime charged.

The court instructs the jury that if you do not believe from the evidence that defendants were present at the time and place when and where the offense, if any, was committed, but that they were at some other and different place, or if you have a reasonable doubt as to whether this is the case, then you will find them not guilty. The defendants are presumed to be innocent until their guilt is established by legal evidence beyond a reasonable doubt; and if you have a reasonable doubt of their guilt you will acquit them.

#### DEFENDANTS' PROPOSED INSTRUCTION NO. 10

The court instructs that the statements of an accomplice made out of court, not in the presence of the defendants, admitting his guilt or accusing the defendants of the commission of an offense, or accusing the defendants of being co-conspirators of such an accomplice, are a doubtful species of evidence and should be acted upon by the jury with great caution.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 11

You are instructed that extra judicial admissions of defendants are to be received and considered with great caution, and that oral admissions of a party should be viewed with caution.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 12

The jury are instructed that if one set or chain of circumstances leads to two opposing conclusions, one pointing to the guilt, the other to the innocence of the defendants, and the jury have any reasonable doubt as to which of such conclusions the chain of circumstances leads, a reasonable doubt is thereby created and the defendants should be acquitted.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 13

Mere probabilities are not sufficient to warrant the conviction of the defendants, nor is it sufficient that the greater weight or preponderance of the evidence supports the charge against them, nor that upon the doctrine of chances that it is more probable that the defendants are guilty than innocent, but to warrant a conviction of the defendants, they must be proved to be guilty so clearly and conclusively that there is no reasonable theory under the law and the evidence upon which they can be innocent.

DEFENDANTS' PROPOSED INDICTMENT

## NO. 14.

You are instructed that the defendants Proffitt and Hill are charged in the first count of the indictment with conspiracy with certain other defendants therein named. It is not only incumbent upon the part of the Government to show beyond a reasonable doubt that a conspiracy was formed and existed, but that the defendants Hill and Proffitt knew that such a conspiracy had been formed and that in pursuance of said conspiracy they did commit or do some overt act in furtherance of the said conspiracy, and in this connection it is not sufficient that you should believe that the probabilities are greater that the said defendants Proffitt and Hill, and upon the doctrine of chance believe, that they did commit some act in furtherance of said conspiracy, but you must be satisfied not only by a preponderance of evidence, but by evidence beyond a reasonable doubt that they did commit some act in furtherance of said conspiracy before you would be justified under the law in finding them guilty.

## DEFENDANTS' PROPOSED INSTRUCTION

## NO. 15

You are instructed that the presumption of innocence prevails throughout the trial and that it is the duty of the jury, if possible to reconcile the evidence with this presumption. That the law presumes a man innocent of crime until he is proven guilty beyond a reasonable doubt; and the law also presumes that every act of the defendants charged with the crime is lawful

and honest, and in determining the guilt of the defendants in this case, it is the duty of the jury to account for the actions and statements of the defendants as being lawful and innocent if the same can be done by any reasonable or fair construction of the whole evidence in the case. And if the jury, after considering all the evidence in the case entertains a reasonable doubt as to whether or not the defendants are guilty, then the jury should give the defendants the benefit of the doubt and acquit them.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 16

You are instructed that in order to convict the defendants on circumstantial evidence, the evidence should be such as to produce the same degree of certainty as that which arises from direct testimony. And if you do not believe from the evidence, beyond a reasonable doubt, that the defendants committed the crime with which they are charged, you must find the defendants not guilty.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 17

The court instructs the jury that a reasonable doubt is one arising from a candid and impartial investigation of all the evidence, or based upon the want of evidence, and such as would cause a reasonable, prudent and considerate man to hesitate and pause before acting in the graver and more important affairs of life. Reasonable doubt arises from a mental oper-



ation and exists in the mind when the judgment is not fully satisfied as to the truth of a criminal charge. It is that state of the case which, after an entire comparison of all the evidence, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction, to a moral certainty, of the truth of the charges, that is, to a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 18

If, after consideration of the whole case, any juror shall entertain a reasonable doubt of the guilt of the defendants, it is the duty of such juror so entertaining such doubt not to vote for a verdict of "Guilty," nor to be influenced to so vote.

The defendants are presumed to be innocent until proven guilty; that presumption accompanies them throughout the trial; it goes with you into your retirement to consider your verdict and operates until you have arrived at a verdict. This presumption will avail to acquit the defendants unless it be overcome by sufficient proof of their guilt to a moral certainty and beyond all reasonable doubt. You must examine the evidence by the light of that presumption and unless, upon examining it, you find the evidence sufficiently strong to overcome the presumption of innocence - - to remove it - - and moreover to satisfy you of the guilt of the defendants, beyond all reasonable doubt, the de-

defendants are entitled to a verdict of acquittal at your hands.

DEFENDANTS' PROPOSED INSTRUCTION

NO. 19

You are instructed that in this case the law raises no presumption against the defendants and the fact that they are charged with the crime alleged, and that an indictment has been filed against them is no evidence of their guilt and should raise no presumptions of such fact in the minds of the jury; but every presumption of law is in favor of their innocence and in order to convict them of the crime alleged in the indictment every material fact necessary to constitute such crime must be proved beyond a reasonable doubt; and if the jury entertain a reasonable doubt upon any single fact or element necessary to constitute such crime, it is their duty to give the defendants the benefit of such doubt and acquit them.

DEFENDANTS' PROPOSED INSTRUCTION

NO. 20

It is not your duty to look for some theory upon which to convict the defendants, but, on the contrary, it is your duty, and the law requires you, if you can reasonably do so, to reconcile any and all circumstances that have been shown with the innocence of the defendants, and so acquit them.

DEFENDANTS' PROPOSED INSTRUCTION

NO. 21

The defendants in this case are presumed by law to be innocent of any crime until their guilt of such

crime and every essential element thereof is established beyond a reasonable doubt.

It is incumbent upon the prosecution to prove every material element of the offense charged beyond a reasonable doubt, and if you have such reasonable doubt as to whether they have proved or have failed to prove any one essential and material fact going to make up their guilt, it is your sworn duty to acquit them.

It is by law considered better that any number of guilty persons should escape than to adopt a course under which an innocent person might be convicted because of an erroneous conclusion of court or jury.

Hence it is that defendants cannot be convicted unless their guilt is established by more than a preponderance of evidence. It is not enough that you should believe in their guilt to such an extent that would make you willing to act in the ordinary affairs of life, even of the greatest importance. This will not do. Before you can find these defendants guilty, you must be satisfied of their guilt to a moral certainty and beyond a reasonable doubt.

#### DEFENDANTS' PROPOSED INSTRUCTION NO. 22

The court instructs you that individual jurors ought not to compromise any well founded doubt of guilt that he may entertain respecting the defendants, with his fellow jurors. You can agree only to convict or acquit, and as you can properly convict only when the guilt of the defendants is so fully and clearly proven

to the mind of each individual juror as to exclude every rational doubt of guilt, therefore, unless the evidence is so credible and convincing as to leave not one rational doubt of guilt, the jury ought to acquit the defendants.

DEFENDANTS' PROPOSED INSTRUCTIONS  
NO. 23

In considering the evidence, if you can reasonably account for any fact in this case on a theory or hypothesis which will admit of defendants' innocence, it is your duty under the law to do so and to reject any theory or supposition on which it might point to their guilt, even though such theory may be reasonable and much more probable than the one which admits of their innocence.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 24

You are instructed that in all criminal cases the law permits a defendant to introduce evidence concerning his general good reputation upon the points of character involved in the special case under consideration; and in this case the law permits the defendants to introduce and they introduced evidence of their good character, honesty and integrity; and you are instructed that if such good character has been satisfactorily shown, it is a fact which must be taken into consideration in determining the guilt or innocence of the defendants, and you are instructed that the reputation of the defendants in the respects above indicated may

of itself be sufficient to create in your minds a reasonable doubt, and if it does create such reasonable doubt as to their guilt, then you should give them the benefit of the doubt and acquit them.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 25

The court instructs the jury as a matter of law, that should you find from the evidence in this case, that prior to the date mentioned in the indictment these defendants bore in the neighborhood in which they lived, a good general reputation for truth and veracity, honesty and integrity, that if such fact is found to be proved by the evidence in this case, may of itself be sufficient to generate in your minds a reasonable doubt upon which you may acquit the defendants.

If you find from the evidence in this case, that the defendants have proved good general reputation as to truth and veracity, honesty and integrity, the law says that such good general reputation may be sufficient to create a reasonable doubt of guilt, although no such doubt would have existed but for such good general reputation.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 26

Evidence of good character is evidence relevant to the question of guilty or not guilty, and is to be considered by you in connection with the other facts and circumstances in the case. One object in laying it be-

fore the jury is to induce the jury to believe from the improbability that a person of good character should have conducted himself as alleged, that there is some mistake or misrepresentation in the evidence on the part of the prosecution and in this connection you must take it into consideration.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 27

Evidence of a witness that he had known the defendants prior to the time the charge was made against them and was acquainted in the neighborhood in which the defendants lived, and that he had never heard anything said against them is evidence tending to show and prove that their characters were good at said time in said neighborhood.

DEFENDANTS' PROPOSED INSTRUCTIONS  
NO. 28

The court instructs you that your personal opinions as to the facts not proven cannot properly be considered as the basis of your verdict. You may believe as men that certain facts exist, but, as jurors, you can only act upon evidence introduced upon the trial, and from that, and that only, you must form your verdict.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 29.

You are instructed that the evidence in this case is insufficient as a matter of law to warrant or sustain

a conviction of the defendants Proffitt and Hill herein on the first count of the indictment herein and you are therefore advised to return a verdict finding them not guilty thereon.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 30.

You are instructed that the evidence in this case is insufficient as a matter of law to warrant or sustain a conviction of the defendants Proffitt and Hill herein on the second count of the indictment herein, and you are therefore advised to return a verdict finding them not guilty thereon.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 31

You are instructed that the evidence in this case is insufficient as a matter of law to warrant or sustain a conviction of the defendants Proffitt and Hill herein on the third count of the indictment herein, and you are therefore advised to return a verdict finding them not guilty thereon.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 32.

You are instructed that the evidence in this case is insufficient as a matter of law to warrant or sustain a conviction of the defendants Proffitt and Hill herein on the fourth count of the indictment herein, and you are therefore advised to return a verdict finding them not guilty thereon.

DEFENDANTS' PROPOSED INSTRUCTION  
NO. 33

You are instructed that the evidence in this case is insufficient as a matter of law to warrant or sustain a conviction of the defendants Proffitt and Hill, and you are therefore advised to return a verdict finding them not guilty thereon.

[Endorsed]: FILED JUN 3 1919 *Chas. N. Williams, Clerk* Ernest J. Morgan, *Deputy*

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AT A STATED TERM, to-wit: The January A. D., 1919 Term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Thursday the 4th day of June, in the year of our Lord, One Thousand Nine Hundred and Nineteen.

PRESENT:

The Honorable OSCAR A. TRIPPET, District Judge.

United States of America, )

Plaintiff, )

vs ) No. 1721 Crim.

Howard J. Proffitt, et al. )

Defendant. )

This cause coming on at this time for further trial before the Court and a jury heretofore impanelled,



all parties being present as before and the Court having announced the jury as present and all being present, the trial hereof is proceeded with.

Robert E. Magee being duly called and sworn testifies on behalf of the defendant as a character witness.

Wm. E. Hill, Defendant, being recalled resumes the stand and testifies further.

In connection with the testimony plaintiff at this time offers in evidence the following named exhibits which were admitted and ordered filed, to-wit:

Plaintiff's "Exs. 5, 5-A, 5-B, 5-C, and 5-D" being five Postal Money Order Receipts Nos. 69866, 7, 8, 9 and 70;

Defendant rests.

Now, at the hour of 11:27 o'clock A.M., the court having given the jury the usual admonition a recess is taken until the hour of 11:37 o'clock A.M. Now, at the hour of 11:37 o'clock A.M., court having reconvened and all being present as before the trial hereof is proceeded with.

Nellie I. Holmes and Eva F. Ammons each being duly called and sworn testify in rebuttal on behalf of the plaintiff.

Now, at the hour of 12:20 o'clock P.M. the Court duly admonished the jury and a recess is taken until the hour of 2:00 o'clock P.M., until which time the said jurors are excused; Now, at the hour of 2:00 o'clock P.M., court having reconvened and all being present the trial hereof is proceeded with.

Defendant's witness Roy B. Holmes is recalled by plaintiff for re-direct examination.

Plaintiff's witness Eva F. Ammons resumes the stand and testifies in rebuttal.

Arthur J. Flavern, Jessie Flavern, Frank Mitchell, May Mitchell and Mrs. Rose Erl at this time came into Court and were identified by the witness Eva F. Ammons.

C. C. Hill here came into court and was identified by witness Eva F. Ammons.

Mrs. J. C. Gaines, here came into court and was identified by the witness Eva F. Ammons

Defendant's witness U. S. McIntosh recalled by plaintiff and testifies in re-direct examination.

M. A. Ammons and Mrs. W. E. Hill each being duly called and sworn testify in rebuttal on behalf of the plaintiff.

Defendant's witness Edward L. Menier is recalled by the plaintiff in rebuttal.

Now, at the hour of 3:50 o'clock P.M., after duly admonishing the jury, a recess is taken by the Court until the hour of 3:57 o'clock P.M. Now, at the hour of 3:57 o'clock P.M. court having reconvened and all being present, the trial hereof is proceeded with.

Defendant's witnesses Arthur J. Flavern, Jessie Flavern, Frank D. Mitchell, May Mitchell, Rose Erl, C. C. King, Mrs. Roll King, Mrs. Alice Hill Stice, and Mrs. Phoebe King each being duly called and sworn testify in rebuttal.

Defendant's witness Howard J. Proffitt is recalled and testifies in rebuttal.

Mrs. Laura Gaines, Miss Margaret Hill and Mrs. Frances Cuthbert each being duly called and sworn testify on behalf of the defendants, in rebuttal.

At this time defendant offers in evidence the following named exhibit which was admitted and read into the record but not filed, to-wit:

Defendant's "Ex. I" A note of Mrs. Ida Hill to Mrs. Frances Cuthbert for \$200.00;

Clarence C. Hill being duly called and sworn testifies on behalf of the defendants in rebuttal;

William E. Hill, defendant's witness, being recalled, testifies in rebuttal on behalf of the defendants.

Now, at the hour of 5:00 o'clock P.M., the Court having given the jury the usual admonition, this cause is by the Court continued to Thursday, the 5th day of June, 1919 at the hour of 9:00 o'clock A.M., for further trial before the Court and jury until which time the jurors herein are excused.

AT A STATED TERM, to-wit: The January A. D., 1919 Term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Thursday the 5th day of June, in the year of our Lord, One Thousand Nine Hundred and Nineteen.

PRESENT:

The Honorable OSCAR A. TRIPPET, District Judge.





Guilty as charged in the Second Count of the Indictment, and Guilty as charged in the Third Count of the Indictment, and Guilty as charged in the Fourth Count of the Indictment :

And, we, the Jury in the above entitled cause find the defendant, WILLIAM E. HILL, Guilty as charged in the First Count of the Indictment, and Guilty as charged in the Second Count of *of* the Indictment, and Guilty as charged in the Third Count of the Indictment, and Guilty as charged in the Fourth Count of the Indictment.

Los Angeles, California, June 5th, 1919.

G. H. Welch

FOREMAN."

It is thereupon by the COURT ORDERED that the jurors herein be and they hereby are discharged with the thanks of the Court, and excused from further service until Tuesday, the 10th day of June, 1919, at the hour of ten o'clock A.M.

It is further ordered that this cause be continued to Monday, the 16th day of June, 1919 for the imposing of sentence upon the said defendants and for any motion or motions that may be made by counsel for the defendants. It is further ORDERED that bail be fixed in the amount of \$5000.00 for each of the defendants, they to stand committed to the Los Angeles County Jail until such bonds are furnished.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

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United States of America, Plaintiff, )
Vs. ) No.1721 Crim.
Howard J. Proffitt and William )
E. Hill, )
Defendants. )

We, the Jury in the above-entitled cause find the defendant, HOWARD J. PROFFITT, Guilty as charged in the First Count of the Indictment, and Guilty as charged in the Second Count of the Indictment, and Guilty as charged in the Third Count of the Indictment, and Guilty as charged in the Fourth Count of the Indictment;

And, we, the Jury in the above-entitled cause find the defendant, WILLIAM E. HILL, Guilty as charged in the First Count of the Indictment, and Guilty as charged in the Second Count of the Indictment, and Guilty as charged in the Third Count of the Indictment, and Guilty as charged in the Fourth Count of the Indictment.

Los Angeles, California, June 5th, 1919.

G. H. Welch
FOREMAN.

[Endorsed]: 1721 Crim. U.S. v. Proffitt et al  
FILED JUN 5 1919 *Chas. N. Williams, Clerk*  
Ernest J. Morgan *Deputy* Verdict

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A conspiracy is a combination between two or more persons to do a criminal or unlawful act, or a lawful act by criminal or unlawful means.

From this definition of conspiracy it follows, of course, that there can be no conspiracy where one individual acts by and for himself only.

A mere mental purpose cannot justify a conviction of conspiracy. A common design is of the essence of the charge.

A person, therefore, in order to become a party to a conspiracy, must combine with someone else to effect the object of the conspiracy by the means agreed upon.

Any one who, after a conspiracy is formed, and who knows of its existence and objects, joins therein, becomes as much a party thereto, from that time, as if he had originally conspired.

To constitute a conspiracy it is not necessary that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be, and the details of the plan or means by which the unlawful combination was to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words, where an unlawful



end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy.

The evidence in proof of the conspiracy may be, and from the nature of the case generally will be, circumstantial.

Where circumstantial evidence is relied upon to establish the conspiracy, or any other fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy or other fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion.

If the evidence can be reconciled either with the theory of innocence or with guilt, the law requires that the defendant be given the benefit of the doubt, and that the theory of innocence be adopted.

You will be called upon to consider, among others, the following questions:

Was there a conspiracy as charged in the indictment, for the objects or either of them therein alleged?

Did either of the defendants, after the formation of the conspiracy, if such were formed, commit the overt acts, or any of them, as alleged in the indictment?

If the evidence satisfies you beyond a reasonable doubt, of the existence of said conspiracy, and that any of said overt acts were committed by the defendants as alleged in the indictment, and that the defendants were parties to said conspiracy when said overt

acts were committed, you will find them guilty as charged in the indictment.

If, however, the evidence fails to so satisfy you of the existence of said conspiracy, or of the commission of either of said overt acts as alleged in the indictment, you will find the defendants not guilty.

The statute of the United States makes it unlawful for any person to fraudulently or knowingly transport, conceal, receive, buy, sell, or in any manner facilitate the transportation, concealment and sale of opium, preparation or derivative thereof, after importation, knowing the same to have been imported contrary to law; and the law provides that on and after July 1, 1913, all smoking opium, or opium prepared for smoking, found within the United States shall be presumed to have been imported after the 1st day of April, 1909, after which date all such importation was prohibited, and the burden of proof shall be on the accused in whose possession such opium may be found, to rebut such presumption. The law further provides that whenever, on trial for violation of this section, the defendant is shown to have, or to have had, possession of such opium, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury.

When possession of the opium is shown in the defendant, by the evidence, beyond a reasonable doubt, then the law places upon him, the defendant, the burden of explaining the possession to your satisfaction.

You are not to infer from this statement that he must satisfy your minds beyond a reasonable doubt of the innocence of his possession, but the doctrine of reasonable doubt as to whether you are satisfied applies to this element of the case, as to any other element. The burden does not shift to the defendant until you are first satisfied, beyond a reasonable doubt, from the evidence, of the defendant's possession of the opium in question.

Concerning the second, third and fourth counts of the indictment, it is not necessary to show that the defendants themselves physically handled the opium, but it is necessary in this regard, before you can convict the defendants, to show that they aided, abetted, counseled, commanded, induced or procured the commission of the crime by the other defendants charged in the indictment with them. And it is sufficient if the Government does show, beyond a reasonable doubt, that they aided, abetted, counseled, commanded induced or procured the commission of the crime.

While you must follow the courts instructions as to the law of the case, you are the sole judges of the facts and the credibility of witnesses, and, if the court expresses an opinion or comments either upon the facts or credibility of witnesses, you are not bound by such opinion or comment, but should exercise your own independent judgment on such matters.

Among the circumstances to be considered by you in passing upon the credibility of witnesses are their relation to the case and its parties, their motives, their manner upon the witness stand, and the reasonable-

ness of their statements. You should also look to the interests which the witnesses have in the suit or its results. Where the witness has a direct personal interest in the result of the suit, the temptation is strong to color, pervert or withhold the facts. The law permits the defendants, at their own request, to testify in their own behalf. The defendants here have availed themselves of this privilege and their testimony is to be treated like the testimony of any other witness, That is, it is for you to say, remembering their testimony, their cross-examination, their demeanor and attitude on the witness stand and during the trial, and everything else in the case, whether or not they told the truth. The deep personal interest which they may have in the result of the suit should be considered by the jury in weighing their evidence and in determining how far or to what extent, if at all, it is worthy of credit.

If any of the witnesses are shown knowingly to have testified falsely on this trial, touching material matters here involved, the jury are at liberty to reject the whole or any part of their testimony.

Any extrajudicial admission of defendants ought to be received and considered with caution, as well as any oral admission made by either party, for the reason that oral statements may be misunderstood.

The government has introduced as a witness one Edmondson and Lee Tong, who, according to their own testimony, were active participants in the crime charged against these defendants, or, in other words, accomplices. There are certain rules of law applicable

to the testimony of accomplices, which it is proper for the court to give you in charge, and, in doing this, I shall adopt language which has heretofore received judicial sanction.

An accomplice is a person who, knowingly and voluntarily, and with common intent with the principal offender, unites in the commission of an offense. Whether the testimony of an accomplice be true or false, is a question which, like all controverted questions of fact, is submitted solely to your determination. It is not within the province of the court to pass upon controverted questions of fact, or upon questions affecting the credibility of witnesses. But it is the duty of the court to call your attention to certain rules which obtain in courts of justice in reference to these persons known in law as "accomplices". On this point you are instructed that a *particeps criminis*,—that is, an accomplice,—notwithstanding the turpitude of his conduct, is not on that account an incompetent witness. It is the settled rule in this country that an accomplice in the commission of a crime is a competent witness, and the government has a right to use him as a witness. It is the duty of the Court to admit his testimony, and that of the jury to consider it. The testimony of an accomplice is, however, always to be received with caution, and weighed and scrutinized with great care by the jury; and it is usual for courts to instruct juries,—and you are instructed in this case,—that you may disregard the evidence of an accomplice unless he is confirmed and corroborated in some material parts of his evidence connecting the defendants

with the crime, by unimpeachable testimony. But you are not to understand by this that he is to be believed only in such parts as are thus confirmed, which would be virtually to exclude him, inasmuch as the confirmatory evidence proves, of itself, those parts to which it applies. If he is confirmed in material parts connecting the defendants on trial with the offenses charged in the indictment, he may be credited in others; and the jury will decide how far they will believe a witness from the confirmation he receives by other evidence; from the nature, probability, and consistency of his story; from his manner of delivering it, and the ordinary circumstances which impress the mind with its truth.

If you should believe from the evidence that any witness who was called by the defendants and testified in their behalf was an accomplice in the commission of the crime or crimes charged in the indictment, then the same rules I have stated to you as being applicable to such witnesses called for the Government are alike applicable to such witnesses called for the defense.

An alibi simply means that the accused was at another place at the time it is sought to prove that he was at a certain place. Now, in this case, there is evidence tending to show that each of the defendants on February 9, 1919, was present at a place in Pasadena. The defendants have sought to show by evidence that they were not at that place on that date. So far as that matter is concerned, the defendants are not required to prove that they were not there beyond a reasonable doubt or even by a preponderance of the

evidence. If in your opinion it becomes necessary for the Government to establish that the defendants were in Pasadena at the time these witnesses testified to, then that must be shown by the Government beyond a reasonable doubt. And if the evidence of an alibi raises in your minds a reasonable doubt as to their presence at that time and place, the alibi on that occasion would be established.

You should also understand that you have a right to convict the defendants or either of them of the offenses charged in the indictment although you may not believe beyond a reasonable doubt that they were in Pasadena on February 9th, provided, you are satisfied from all the evidence introduced in the case that they are guilty as charged in the indictment, notwithstanding you may have such reasonable doubt as to their having been in Pasadena at said time.

There are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime. One is direct or positive testimony of an eye-witness to the commission of the crime; the other is testimony in proof of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendants, and which is known as circumstantial evidence.

Such evidence may consist of admissions by the defendants, plans laid for the commission of the crime; in short, any acts, declarations or circumstances admitted in evidence tending to connect the defendants with the commission of the crime.

Where the evidence is entirely circumstantial, yet is not only consistent with the guilt of the defendants, but inconsistent with any other rational conclusion, the law makes it the duty of the jury to convict.

Witnesses have testified as to the good character of the defendants. On this subject the court charges you that the good character of a person accused of a crime, when proven, is itself a fact in the case; it must be considered in connection with all the other facts and circumstances adduced in evidence on the trial, and if, after such consideration, the jury are not satisfied, beyond a reasonable doubt, of the defendants' guilt, they should acquit them. If, however, they are so satisfied from all the evidence in the case, that the defendants are guilty, they should convict them, notwithstanding proof of good character.

Neither the finding of an indictment, nor any allegation thereof, raises any presumption whatever of the defendant's guilt, but the burden of proof is upon the Government. The law presumes the defendants innocent until proven guilty beyond a reasonable doubt, and this rule applies to every material element of the offense charged.

A reasonable doubt is a doubt which is reasonable in view of all the evidence, and if, after an impartial comparison and consideration of all the evidence, you can candidly say that you are not satisfied of the defendants' guilt, you have a reasonable doubt. But if, after such impartial comparison and consideration of all the evidence, you can truthfully say that you have an abiding conviction of the defendants' guilt, such as



you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt.

By such reasonable doubt, you are not to understand that all doubt is to be excluded. It is impossible, in the determination of these questions, to be absolutely certain. You are required to decide the question submitted to you upon the strong probabilities of the case, and to justify a conviction the probabilities must be so strong as, not to exclude all doubt or possibility of error, but as to exclude reasonable doubt.

When, weighing all the evidence, you have an abiding conviction and belief that the defendants are guilty, it is your duty to convict and no sympathy justifies you in seeking for doubts by any strained or unreasonable construction or interpretation of evidence or facts.

This case, like all cases triable in a court of justice, should be determined by a jury upon the evidence before them, and upon that alone, subject to the rules of law laid down for your guidance by the court, and no juror acting conscientiously can base his verdict upon any other consideration.

Juries are empaneled for the purpose of agreeing upon a verdict, if they can conscientiously do so. It is true that each juror must decide the matter for himself, yet he should do so only after a consideration of the case with his fellow jurors, and he should not hesitate to sacrifice his views or opinions of the case when convinced that they are erroneous, even though in so doing he defer to the views or opinions of others.

[Endorsed]: 1721 Crim. U.S. v. Proffitt et al  
 FILED JUN 5 1919 *Chas. N. Williams, Clerk*  
*Ernest J. Morgan Deputy* Courts' Instructions to Judge

AT A STATED TERM, to-wit: The January A. D.,  
 1919 Term of the District Court of the  
 United States, within and for the Southern  
 Division of the Southern District of Califor-  
 nia, held at the Court Room thereof, in the  
 City of Los Angeles, on Tuesday the 17th  
 day of June, in the year of our Lord, One  
 Thousand Nine Hundred and Nineteen.

PRESENT:

The Honorable OSCAR A. TRIPPET, Dis-  
 trict Judge.

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs	)	No. 1721 Crim.
	)	
Howard J. Proffitt, et al.	)	
	)	
Defendants.	)	

This cause coming on at this time for the hearing  
 of Defendant Proffitt's motion in arrest of Judgment,  
 Defendant Proffitt's motion for a new trial and for the  
 imposing of sentence upon defendants Proffitt and  
 Hill; Gordon Lawson, Esq., and Wm. F. Plamer, Esq.,  
 Assistant U. S. Attorneys, counsel for the plaintiff,  
 the defendant Howard J. Proffitt on bond and the  
 defendant Wm. E. Hill in the custody of the U. S.  
 Marshal together with their counsel Frank E. Domin-

guez, Esq., and Milton E. Cohen, Esq., present in open Court.

Edward de St. Maurice, an official shorthand reporter of the testimony and proceedings present and acting as such.

Milton E. Cohen, Esq., Gordon Lawson, Esq., and Frank E. Dominguez, Esq., each respectively present oral argument to the Court upon the said motions, whereupon it is by the Court ORDERED that said motions be and the same are hereby denied and the exceptions of counsel for the defendants thereto noted.

The Court thereupon proceeds to pronounce sentence upon the said defendants for the crime of which they now stand convicted, viz: the crime of the Violation of Section 37 F. P. C. conspiracy to violate the Act of January 17, 1914, and the violation of the Act of January 17, 1914. Smuggling smoking opium.

The judgment of the Court is that the defendant Howard J. Proffitt be imprisoned in the United States Penitentiary at McNeil Island, Washington for the term and period of two (2) years on the first count of the indictment and for the term and period of two (2) years and pay into the United States of America a fine in the amount of fifty (50) dollars on the second count of the indictment, said terms to run concurrently; that the defendant be imprisoned for the term and period of two (2) years on the third count of the indictment and pay a fine unto the United States of America in the amount of fifty (50) Dollars and be imprisoned for the term and period of two (2) years on the fourth count of the indictment and pay unto

the United States of America a fine in the amount of Fifty (50) Dollars and to run concurrently, said terms of imprisonment imposed on the third and fourth counts to start to run at the expiration of the *the* term imposed in the first count.

The judgment of the Court is that the defendant William E. Hill be imprisoned in the United States Penitentiary at McNeil Island, Washington for the term and period of two (2) years on the first count of the indictment; for the term and period of two (2) years and pay unto the United States a fine in the amount of Fifty (\$50) Dollars on the second count of the indictment, said term to commence at the expiration of the term imposed on the first count; for the term and period of two (2) years and pay unto the United States of America a fine in the amount of Fifty (\$50) Dollars on the third count of the indictment, said term to commence to run at the expiration of the term imposed on the second count; for the term and period of one (1) year and pay unto the United States of America a fine in the amount of Fifty (\$50) Dollars on the fourth count of the Indictment, said term to commence to run at the expiration of the term imposed on the third count.

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IN THE DISTRICT COURT OF THE UNITED  
STATES, WITHIN AND FOR THE SOUTH-  
ERN DISTRICT OF CALIFORNIA,  
SOUTHERN DIVISION.

UNITED STATES OF )  
AMERICA, )

Plaintiff, )

vs )

No. 1721 Crim.

Howard J. Proffitt, et al, )

Defendants )

I, CHAS. N. WILLIAMS, Clerk of the United States District Court, within and for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of the JUDGMENT entered in the above entitled cause, and I do further certify that the papers hereto annexed constitute the JUDGMENT ROLL in said action.

ATTEST my hand and the official seal of said District Court, this 21st day of June, A.D., 1919.

CHAS. N. WILLIAMS, Clerk,

(Seal)

By Maury Curtis

Deputy.

[Endorsed]: No. 1721 Crim In the District Court OF THE UNITED STATES FOR THE Southern District of California Southern Division United States of America, Plaintiff, vs. Howard J. Proffitt, et al. Defendants. JUDGMENT ROLL as to Howard J. Proffitt & WM. E. Hill Filed June 21-1919 Chas. N. Williams Clerk By Maury Curtis Deputy Clerk Recorded Minute Book No. 34 page 122

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AT A STATED TERM, to-wit: The January A.D., 1919 Term of the District Court of the

United States, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the 23rd day of June, in the year of our Lord, One Thousand Nine Hundred and Nineteen.

## PRESENT:

The Honorable OSCAR A. TRIPPETT, District Judge.

United States of America, )

Plaintiff, )

vs

) No. 1721 Crim.

Howard J. Proffitt, et al. )

Defendant. )

This cause coming on at this time for the imposing of sentence upon the defendants Wm. Frank Edmonson and Lee Tong, alias Hom Hong; Gordon Lawson, Esq., Assistant U. S. Attorney, counsel for the plaintiff, both defendants present in open court on bail and R. Kittrelle, Esq., counsel for Lee Tong, present

It is by the Court ordered that the imposing of sentence upon the defendant Wm. Frank Edmonson be and the same hereby is continued to Tuesday, the 24th day of June, 1919 at the hour of ten o'clock A. M.

The Court proceeds to pronounce sentence upon the defendant Hom Hong for the crime of which he now stands convicted, viz: the crime of the violation of Sec. 37 F.P.C. conspiracy to violate the Act of Jan.

17, 1914, violation of the act of Jan. 17, 1914. Smuggling smoking opium.

The judgment of the Court is that the defendant Lee Tong, alias Hom Hong pay a fine unto the United States of America in the amount of One Hundred (\$100) Dollars and to stand committed to the Los Angeles County Jail until said fine is paid.

IN THE DISTRICT COURT OF THE UNITED STATES, WITHIN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES OF	)	
AMERICA,	)	
	)	Plaintiff,
	)	
vs.	)	No. 1721 Crim.
	)	
Howard J. Proffitt, et al.	)	
	)	
	)	Defendant.

I, CHAS. N. WILLIAMS, Clerk of the United States District Court, within and for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of the JUDGMENT entered in the above entitled cause; and I do further certify that the papers hereto annexed constitute the JUDGMENT ROLL in said action.

ATTEST my hand and the official seal of said District Court, this 26th day of June, A. D., 1919.

CHAS. N. WILLIAMS, Clerk,

(Seal)

By Ernest J. Morgan

Deputy.

[Endorsed]: No. 1721 Crim In the District Court OF THE UNITED STATES FOR THE Southern District of California Southern Division United States of America, Plff. vs. Howard J. Proffitt, et al. Defts. JUDGMENT ROLL as to Defendant Lee Tong. Filed 26th June 1919 Chas. N. Williams Clerk By Ernest J. Morgan Deputy Clerk Recorded Minute Book No. 34 page 148

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AT A STATED TERM, to-wit: The January A. D., 1918 Term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 30th day of June in the year of our Lord, One Thousand Nine Hundred and Nineteen.

PRESENT:

The Honorable OSCAR A. TRIPPET, District Judge.

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs	)	No. 1721 Crim.
	)	
Howard J. Proffitt, et al.	)	
	)	
Defendant.	)	

This cause coming on at this time for the imposing of sentence upon the defendant Wm. F. Edmonson; Gordon Lawson, Esq., Assistant U. S. Attorney, coun-



sel for the plaintiff, the defendant and his counsel Claude Morton, Esq., present in open Court.

Counsel for the defendant makes a statement on behalf of the defendant and asks the Court for such *leniency* as the Court may see fit to grant.

Gordon Lawson, Esq., Assistant U. S. Attorney and Frank E. Johnson, Esq., of the Department of Justice each make a statement to the Court.

The defendant at this time through counsel asks permission of the Court to change his plea of Guilty heretofore entered as to the Second Count of the Indictment, and it is at this time by the Court ordered that the plea of Not Guilty now interposed by the defendant as to the second count of the indictment be and the same is hereby entered of record.

The Court thereupon proceeds to pronounce sentence upon the defendant for the crime of which he now stands convicted, viz: the crime of the violation of Section 37 F.P.C. Conspiracy to violate the act of Jan. 17, 1914. Violation Act Jan. 17, 1914, Smuggling smoking opium.

The judgment of the Court is that the defendant WILLIAM FRANK EDMONSON be committed to the Los Angeles County Jail for the term and period of six (6) months on the first count of the indictment; to pay unto the United States of America a fine in the amount of Fifty Dollars (\$50) and to be imprisoned for the term and period of six (6) months on the third count of the Indictment and to pay a fine in the amount of Fifty Dollars (\$50) and to be imprisoned for the term and period of six (6) months on the

fourth count of the Indictment, the terms of imprisonment on the third and fourth counts to run concurrently with the term of imprisonment on the first count. The defendant to stand committed until the fines are paid.

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IN THE DISTRICT COURT OF THE UNITED STATES, WITHIN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES OF	)	
AMERICA,	)	
	)	Plaintiff,
	)	
	)	vs.
	)	No. 1721 Crim.
	)	
Howard J. Proffitt, et al.	)	
	)	
	)	Defendant.

I, CHAS. N. WILLIAMS, Clerk of the United States District Court, within and for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of the JUDGMENT entered in the above entitled cause, and I do further certify that the papers hereto annexed constitute the JUDGMENT ROLL in said action.

ATTEST my hand and the official seal of said District Court, this 2nd day of July A. D., 1919.

(Seal)

CHAS. N. WILLIAMS, Clerk,

By Ernest J. Morgan

Deputy.

[Endorsed]: No. 1721 Crim In the District Court OF THE UNITED STATES FOR THE Southern District of California SOUTHERN DIVISION United States of America, Plaintiff, vs. Howard J. Proffitte, et al Defendants. JUDGMENT ROLL as to Wm. F. Edmonson Filed 2nd July, 1919 Chas. N. Williams Clerk By Ernest J. Morgan Deputy Clerk Recorded Minute Book No. 34 page 169

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AT A STATED TERM, to-wit: The July A. D., 1919 Term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 28 day of July, in the year of our Lord, One Thousand Nine Hundred and Nineteen.

PRESENT:

The Honorable BENJAMIN F. BLEDSOE,  
District Judge.

United States of America,	)	
Plaintiff.	)	
	)	
vs	)	No. 1721 Crim.
	)	
Howard J. Proffitt, et al.,	)	
Defendant.	)	
	)	

On the motion of T. F. Green, Esq., Assistant U. S. Attorney counsel for the plaintiff and upon the authority of the Attorney General, it is by the Court

ordered that this cause be dismissed against defendant William Frank Edmonson as to Count 2 of the indictment herein and that said cause be dismissed against Lee Tong, alias Hom Hong as to counts 2, 3 and 4 of said indictment.

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IN THE DISTRICT COURT OF THE UNITED STATES, WITHIN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES OF )  
 AMERICA, )  
 Plaintiff, )  
 )

vs ) No. 1721 Crim.  
 )  
 )

Howard J. Proffitt, et al., )

Defendants. )

I, CHAS. N. WILLIAMS, Clerk of the United States District Court, within and for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of the Judgment entered in the above entitled cause, and I do further certify that the papers hereto annexed constitute the Judgment roll in said action.

ATTEST my hand and the official seal of said district Court, this 31<sup>st</sup> day of July, A. D., 1919.

(Seal)

Chas. N. Williams,  
 Clerk U. S. District Court,  
 Southern District of California.  
 By Maury Curtis *Deputy*.

[Endorsed]: No. 1721 Crim In the District Court OF THE UNITED STATES FOR THE Southern District of California Southern Division United States of America, Plff. vs. Howard J. Proffitt, et al. Deft. JUDGMENT ROLL as to Edmonson (2d Count) & Lee Tong as to Counts 2, 3, 4 Filed July 31—1919 Chas. N. Williams Clerk By Maury Curtis Deputy Clerk Recorded Minute Book No. 34 page 281

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

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THE UNITED STATES ) No. 1721 Crim.  
OF AMERICA, )  
Plaintiff, ) BILL OF EXCEP-  
 )  
vs. ) TIONS OF DEFEND-  
 )  
HOWARD J. PROF- ) ANT, HOWARD J.  
FITT, et al., )  
Defendants. ) PROFFITT.

BE IT REMEMBERED that heretofore, to wit, on the 18th day of April, 1919, the Grand Jury of the United States, in and for the Southern District of California, Southern Division, did find and return unto the above entitled Court its indictment against the defendants, HOWARD J. PROFFITT, WILLIAM E. HILL. WILLIAM FRANK EDMONSON, LEE TONG, alias HOM HONG, and JOHN DOE SMITH, alias "COCKEYE" SMITH, for violation of Section

37 of the Federal Penal Code, conspiracy to violate the Act of January 17, 1914, and violation of Act of January 17, 1914, and thereafter, on the 21st day of April, 1919, the said Howard J. Proffitt appeared in said Court and was duly arraigned upon the said indictment and entered his plea of "not guilty" thereto, and thereafter, upon the 22d day of April, 1919, the said Howard J. Proffitt filed a demurrer to said indictment, and thereafter, upon the 26th day of May, 1919, the said demurrer was duly heard by said Court, which duly and regularly made its order overruling said demurrer, to which order of the Court, then and there made, overruling the demurrer of said defendant, the said defendant took an exception, which exception was then and there duly and regularly allowed and entered by the Court.

That thereafter, upon the 27th day of April, 1919, said cause came on duly and regularly for trial, the Government being represented by Fleet W. Palmer and Gordon Lawson, Esqs., Assistant United States District Attorneys for the Southern District of California, and the defendant being represented by Frank E. Dominguez, William H. Willis and Milton M. Cohen, Esqs. Thereupon the jury to try the case was duly and regularly impaneled and the following proceedings took place on and during the trial, to wit: Opening Statement on Behalf of the Prosecution by Mr. Lawson:

MR. LAWSON: May it please the Court and you, gentlemen of the jury:

You have heard the indictment in this case read, and I take it that the purpose of this opening statement is to sketch an outline of the evidence so that you will better be able to follow the evidence as it goes in, and may consider it better and more clearly. Anything that I might say to you is not to be construed as evidence in any sense of the word. This is merely an attempt on the Government's part to assist you in getting an outline so that you might be able to better consider the evidence.

The first charge in this indictment is a charge of conspiracy to violate the opium act. That is, a conspiracy to receive, to conceal and to facilitate the transportation and concealment of opium. Under that direct charge of a conspiracy are the various overt acts that have been set out. The second, third and fourth counts of the indictment are what we term substantive offenses; that is, the direct crime, not a conspiracy.

To aid you in considering all counts together in relation to the evidence, you will observe that the overt acts set out in the first count of the indictment; that is, the conspiracy charge, are the same offenses as are set out in the subsequent counts; that is, the substantive offenses. Therefore, you may consider all the evidence in regard to the first charge together with the substantive offenses that appear in the second, third and fourth counts.

Now, the evidence that the Government will adduce here before you will show that these defendants were intimate; that they associated together. First, the Government will show the association between the de-

fendants, Hill and Proffitt. The evidence will show that the idea for committing this offense was born in the minds first of Hill and Proffitt. Then there was drawn into this conspiracy a man who is not on charge here, and who is not before you, but a man named in the indictment. We call him John Doe Smith, alias "Cockeye" Smith. He was drawn into this conspiracy by the defendants Hill and Proffitt. Then these three--Hill, Proffitt, "Cockeye" Smith--got together with another man named in the indictment, Hom Hong. First of all, there were several smaller transactions between these that I have already mentioned, particularly on two different occasions, each transaction constituting, I believe, two cans of opium. Then their acquaintance ripened and their activities increased. They laid plans on a larger scale. And the next point in the evidence will show that they were engaged in a conspiracy to violate the law in regard to about fifty 5 and 4 1/8 tael cans of opium. "Tael" is the Chinese measurement, and the words "5 tael" merely indicates the size of the can and the amount of the contents. There are two sizes--the 5 tael and the four and one-eighth tael.

They agreed in regard to this crime connected with the fifty cans of opium. That transaction was to be consummated at the City of Pasadena, and in pursuance of that conspiracy, the defendants Hill and Proffitt caused this opium to be transported to the City of Pasadena, there to be sold to Hom Hong, and "Cockeye" Smith was to arrange for this sale.

The crime is receiving, concealing and facilitating the transportation and concealment of opium. All



right. The opium was transported, the evidence will show, to the City of Pasadena. Proffitt and Hill appeared there. Hom Hong was there; "Cockeye" Smith was there. They were ready for the transaction. The money was about to pass and the opium was about to pass. The evidence will show that the defendants Hill and Proffitt appeared on the scene. The opium was seized by them, and Hom Hong forcibly disappeared from the conspiracy. We are not here concerned with that particular transaction, other than the fact that Hom Hong at this point forcibly was ejected from the conspiracy by Proffitt, Hill and "Cockeye" Smith.

The opium was then taken from the City of Pasadena to some point in the City of Los Angeles. That exact point we do not know. Then there appeared on the scene the man mentioned in this indictment -- Edmondson was taking part of this opium to Chinatown for sale.

The evidence will further show that the defendants, Hill and Proffitt, came to Edmondson and induced Edmondson to take this opium and distribute it -- to sell it, and so forth, among the various Chinese in Chinatown. And while engaged in that execution of that phase of the conspiracy, Frank Edmondson, after a chase, was apprehended, and one can of opium was found in his possession. Immediately his room was seized and opium was found there in his room, which opium had been taken to the room by the defendants Hill and Proffitt. And likewise, the evidence will show that the opium that was found in the possession of Edmondson in an automobile in Chinatown, was

(Testimony of Woo Hay.)

brought to Edmondson by the defendants Hill and Proffitt.

That in general is a sketch, -- a brief outline of the evidence. But the evidence will further show after that point that the activities of Hill and Proffitt in regard to the arrest of Edmondson will clearly show the guilty knowledge that they had, and the participation that they had in this crime.

And, gentlemen of the jury, upon that evidence, which I merely named the sub-heads of, we expect at your hands a conviction.

TESTIMONY OF WOO HAY FOR THE  
GOVERNMENT:

WOO HAY, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 8 of Reporter's Transcript):

My name is Woo Hay. I am a paying teller at the Bank of Italy in Los Angeles. I know Hom Hong; also know him by the name of Lee Tong. He has a savings account at the Bank of Italy. On February 8th of this year he drew a check (plaintiff's Exhibit No. 1) on his savings account for \$4,000, and I gave him the money in big denominations of currency. When he came to the bank to draw his money he was alone.

(Testimony of Lee Tong.)

TESTIMONY OF LEE TONG FOR THE  
GOVERNMENT:

LEE TONG, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 15 of Reporter's Transcript):

My name is Lee Tong and Tom Hong. I live in Los Angeles and I have been in the general merchandise business for about twenty years. I know W. E. Hill by the name of "Handsome Hill" and I have known him for several years, and I know Proffitt by the name of "Fat Policeman." Mr. Hill introduced "Cockeye" Smith to me in December of 1918, about two or three blocks away from the Plaza. He is a tall fellow and he wore eyeglasses. Hill told me he had one false eye. Hill told me "Cockeye" Smith had opium to sell to me. I went up there and saw him and he told me he would sell me the opium for \$140 a can, but he cut the price to \$132.50 per can and I bought two cans. I know smoking opium when I see it; it is generally put up in brass or copper cans. I saw the contents of the two cans which I bought; it was smoking opium. I smoked it. Hill brought the opium to me to my store. I gave the money to Hill. It was \$265. I saw Hill after that and he telephoned me quite often. I saw him again in the Chinese year, first month eighth day. Hill telephoned me down to my store and told me to go over to Pasadena and meet him there. That was on February 8, 1919. The next time I saw "Cockeye" Smith after meeting him at the Plaza was in Pasadena, Fri-

(Testimony of Lee Tong.)

day, February 8th. Hill told Proffitt to bring "Cockeye" Smith to Pasadena to see me. I met "Cockeye" Smith in Pasadena, Chinese, first month eighth day. (The interpreter stated that that was about February 8th, but it was not very accurate). I had a conversation with "Cockeye" Smith at that time, on February 8th; it was on Friday; and he brought a couple of cans of opium down and let me sample them and he asked me \$140 per can. Later on he cut the price and asked \$100 for the can. "Cockeye" Smith told me he had 50 more cans of opium and was going to bring it down Sunday and sell it to me for \$80 a can. He said he was going to bring it Sunday, right after that Friday, and that I was to get \$4,000 from the bank and to give it to him, and I told him if it was good I would buy it and if it is no good I would not take it. I tried it on that Friday and it was opium. Hill telephoned me on Friday and said they were going to bring the opium Sunday. So I went to the bank and got \$4,000 in currency, eight packages of money, \$500 in a package, and then I went to Pasadena on the Sunday immediately following the Friday that I saw "Cockeye" Smith in Pasadena. I started here at half-past five and arrived there a little after six. I met "Cockeye" Smith there at eight o'clock; we met in the store of Foo Yin. There were other Chinamen present, Wong Wing, Chin Ngew, and Wong Hing. "Cockeye" Smith brought a valise with him and he said he wanted to see my money. I got the money from my pocket and showed it to him, and "Cockeye" Smith got a revolver and he pointed it

(Testimony of Lee Tong.)

at Wong Wing and Chin Ngew to frighten him. He then put the opium on the bed. He brought out of the valise seven or eight cans, copper cans. There were other cans in the bag that he did not take out. Some opium leaked out- -he examined it and it was opium.

MR DOMINGUEZ: (page 26 Reporter's Transcript) I move to strike out the testimony of the witness to the effect that it was opium, on the ground that no foundation has been laid, incompetent, irrelevant and immaterial.

THE COURT: Well, this witness has already testified that he knows opium when he sees it. The objection will be overruled.

MR LAWSON: Do you want to see this first (exhibiting two cans to Mr. Dominguez)?

MR DOMINGUEZ: No.

MR LAWSON: Two cans.

THE COURT: You better take them one at a time.

Q BY MR LAWSON: Well, first one can- -the larger of the two. I will ask you if that is the same kind that you saw there at that time that Sunday afternoon?

MR DOMINGUEZ: We object to that on the ground it is incompetent, irrelevant and immaterial.

THE COURT: I will sustain the objection in that form. I think you can get at it in a different way, Mr Lawson, so there will be no error.

MR LAWSON: What was your Honor's ruling?

THE COURT: I say I will sustain that objection. You asked him, the same kind.

(Testimony of Lee Tong.)

Q BY MR LAWSON: Well, have you ever seen that can before?

A Yes. They are the same company--Lai Yuen Company.

MR DOMINGUEZ: I submit, if your Honor please, that that is not responsive to the question.

THE COURT: Well, that would not make any difference. The objection will be overruled.

Q BY MR LAWSON: Now, I submit to you the smaller can of the two and ask you if the name on that is the same as the name on the cans that you saw on Sunday afternoon?

A Lai Yuen Company --same company.

MR LAWSON: We now offer them for identification, United States Exhibits 2 and 3.

MR DOMINGUEZ: We object to the introduction of those even for the purpose of identification. There is absolutely no connection shown between those cans here and any of the defendants in the case, and it is wholly immaterial.

THE COURT: Well, Mr. Dominguez, they simply want to identify these and give them a number, so that they will know that those are the cans that this witness is talking about. The objection will be overruled. Now, the larger can will be marked Exhibit 2 for Identification. It is not received in evidence. The smaller can will be marked 3 for Identification.

MR DOMINGUEZ: Will your Honor permit me now to move to strike out the testimony of this witness insofar as his testimony states that the cans that were

(Testimony of Lee Tong.)

shown him there at that time and on that bed contained opium?--shown him by "Cockeye" Smith at that time and place, on the ground that it is incompetent, irrelevant and immaterial, and upon the ground that no foundation has been laid.

MR LAWSON: It has already been ruled upon.

THE COURT: The motion will be denied.

MR DOMINGUEZ: We except.

(page 29 of Reporter's Transcript) While "Cockeye" Smith and I were in the room Hill and the fat policeman broke in the door and handcuffed me. Hill went and grabbed the money from the table inside the room. Then Hill put the opium back in the valise and the fat policeman pointed a revolver at me and took me up to the car which was in front of the Foo Yin Company. Hill brought the opium back to the car and the fat policeman, Mr. Proffitt, brought me up to the car there and then the four of us drove away from the store. Hill was the driver of the car and I sat on the side with the fat policeman, and "Cockeye" Smith on the other side in the back seat. They then drove me past a hotel and around the park and then the fat policeman asked me whether I would give up the money or wanted to go to jail. I told him that I didn't want to give up the money or go to jail, and he told me he got the opium and he swore at me and said he was going to put me in jail. I told him it belonged to Smith, it didn't belong to me. He tried to get the money out of my pocket, but he didn't do it. He took

(Testimony of Lee Tong.)

me out of the car and tried to get the money away from me, and I refused to give it up. Then Hill came over, punched me on the head and grabbed the money from me. Then Hill, Smith and Proffitt drove away in the machine, leaving me there. They took the handcuffs off me before they put me off the car. This was somewhere between Pasadena and Los Angeles. After that I took the car and went to Los Angeles. I got back that evening and told my friends about it, and they brought me up to the station to identify him. And I asked the police where Hill is, and he told me that he reported to the station about eleven o'clock; and I stayed there about ten o'clock and waited, and finally Hill came up on the street. I pointed my finger on him and he turned the corner and went back into the station--turned back right into the station.

(Page 34 of Reporter's Transcript) Q When did you see Hill again? A Three days later.

Q BY THE COURT: When was it? A About Wednesday.

Q BY MR LAWSON: About what time of day was that?

A Half-past one.

Q Where was this? A He went to my store.

Q What did he say?

MR DOMINGUEZ: Just a moment; we object to that on the ground it is incompetent, irrelevant and immaterial, calling for testimony outside of the alleged conspiracy, not tending to prove any of the overt acts mentioned in the indictment.



(Testimony of Lee Tong.)

(Page 35 of Reporter's Transcript) THE COURT:  
This question is addressed to what Hill said?

MR LAWSON: Yes, your Honor.

THE COURT: The objection will be overruled.

MR DOMINGUEZ: Exception.

THE COURT: Now, let's see. This occurred after  
the - -

MR LAWSON: After the Sunday, your Honor.

THE COURT: Yes.

(Page 36 of Reporter's Transcript) MR LAW-  
SON: Already testified to, and on a Wednesday - -

THE COURT: Sir?

MR LAWSON: On a Wednesday after the Sun-  
day already testified to.

THE COURT: Well, now - -

MR LAWSON: The date alleged in the conspir-  
acy, your Honor, extends up to the time of the filing  
of the indictment.

THE COURT: The objection will be overruled.

MR DOMINGUEZ: Exception.

Hill told me that he heard I got a lawyer and if I  
didn't let up he was going to shoot me and he pointed  
a revolver at my brain. He told me he was going to  
take me to "Cockeye" Smith and get my money back  
for me and also get the opium.

(Page 37 of Reporter's Transcript) Q You re-  
ported the matter to the police on the Sunday night  
before the Wednesday, did you not?

(Testimony of Lee Tong.)

MR DOMINGUEZ: That is objected to on the ground that it is incompetent, irrelevant and immaterial, calling for hearsay, leading and suggestive.

MR LAWSON: Well, I don't see the hearsay of that, your Honor.

THE COURT: The objection will be overruled.

MR DOMINGUEZ: Exception.

MR DOMINGUEZ: Will you stipulate that the Sunday referred to was Sunday, February 9, 1919?

MR LAWSON: Yes sir.

THE COURT: That is stipulated, that that is the date that they are talking about.

MR DOMINGUEZ: Yes sir.

#### CROSS-EXAMINATION.

(Page 38 of Reporter's Transcript) I am known under different names. I visited in San Diego and was convicted of a felony there in 1914 under the name of Jew Ah Joe. I was also convicted of a felony under the name of Lee Ting Hing. I pleaded guilty today in this Court to the first count of this indictment. I have known Mr. Hill since he was an officer down in Chinatown, about one or two years. Mr. Hill was present at the time the doors of my place of business were broken down by the police when they were trying to find lottery tickets and gambling paraphernalia. He raided the place a couple of times but never found any lottery tickets. This was at 315 1/2 Marchessault Street. When Hill introduced me to "Cockeye" Smith there was nobody else present. On Friday, the day

(Testimony of Lee Tong.)

that Smith showed me the opium, Hill telephoned me and said he was busy and could not come to Pasadena with me, but that the fat policeman would come there, but I only met "Cockeye" Smith alone. I did not talk to Mr. Proffitt on the Friday that I saw him on the street car going to Pasadena with "Cockeye" Smith. The only time I ever talked to him was on February 9, 1919, except one time before the robbery, when he was at my store and got a drink of water. That was the end of last year. The fat policeman never talked with me about opium or never sold me any opium. In Pasadena, on February 9, 1919, I was sitting on the table in the store there and I counted eight packages of money, \$4,000, and Wong Wing was there, and I had \$210 besides; altogether the total amount of money was \$4,210.

#### TESTIMONY OF WONG HING FOR THE GOVERNMENT.

WONG HING, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 76 of Reporter's Transcript):

My name is Wong Hing. I live in Los Angeles. I used to live in Pasadena. I am not doing anything now, but I was in the general merchandise business in Pasadena. I know Hom Hong- have known him for a long time. I know Hill, the defendant, as a patrolman down in Chinatown for quite a while. I know Proffitt by the name of "the fat policeman." I have seen "Cockeye" Smith in my store on Fair Oaks Street,

(Testimony of Wong Hing.)

Pasadena. The first time was on February 8th or 9th, in 1919, about six o'clock in the evening. Hom Hong was there at the time and others, Wong Wing and some visitors. Smith came in and went in the back room. They went in and closed the door. I was sitting outside. I saw Smith again on the 9th, that was on a Sunday, at the store at the same place, and Hom Hong was there at the time, also Wong Wing and Chin Ngew. That was about six o'clock. Smith had a valise along with him. They went into the back room and closed the door. I saw Hong get some money from his pocket and show it to Smith. I saw Hill and Proffitt come in shortly after Smith arrived. They broke down the door and pointed a revolver at us. This was about eight o'clock on Sunday. We ran out of the building. The fat policeman wears a cap and a kind of a police uniform and Hill wore ordinary civilian clothes. Proffitt had a short mustache and Hill had a long one, but I recognized Hill and Proffitt because they had been policemen down in Chinatown for quite a while. Then the fat policeman handcuffed Hom Hong and Hill got a valise and put it in the automobile.

#### CROSS-EXAMINATION.

(Page 85 of Reporter's Transcript) Proffitt wasn't a patrolman down in Chinatown. I saw Proffitt on February 9, 1919, also in the Police Station. I went up there to identify him on the night of February 9, 1919, and once before that time I saw Proffitt when he came into the store to pay us a visit and he asked

(Testimony of Wong Hing.)

us for a cup of water and we gave him a cup of water and a cigar. I never talked to "Cockeye" Smith in my life, never heard him talking, or heard anything that he said. I never went in the back room when Smith and Hom Hong were there. When Smith and Hom Hong came out of the room with Hill and Proffitt on February 9th he didn't say anything to me or didn't make any remark as to what had occurred in the room. On February 9th of 1919, in the bedroom where Smith and Hom Hong were, I peeped in the door, which was half closed, and Hom took the money and showed it to the fellow and put it back in his pocket again. I don't quite remember seeing anything else in the room at the time.

TESTIMONY OF WONG WING FOR THE  
GOVERNMENT:

WONG WING, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 103 of Reporter's Transcript):

My name is Wong Wing. I live in Los Angeles, but did live in Pasadena; was in partnership with Wong Hong. I know the defendant Hill by the name of "Handsome Boy." I know Proffitt by seeing him. I don't know his name. He once visited my store in Pasadena and I offered him a cigar. That was in December, 1918. I haven't seen him until the day they came and robbed us. I know "Cockeye" Smith when I see him. He is a tall fellow, very sloppy in his appearance, has a dark complexion. He wore eyeglasses.

(Testimony of Wong Wing.)

He was in my store in Pasadena on February 9, 1919--that was Sunday night; also on Friday night before that Sunday. There were other friends of mine present. On the Friday night he didn't bring anything with him. He had a conversation with Hong which I didn't hear. They had their talk in the bedroom; and then he came again on the Sunday night about eight o'clock and went in the bedroom with Hong. Smith pointed a revolver at me, and I told him that Hong doesn't speak English; that I would interpret for him. Smith had a valise. He told us to get out of the room, but I came back in the room again for my shoes and I saw seven or eight cans of opium on the bed and also Hom Hong showed Smith some money. After that Proffitt and Hill broke down the door and came into the bedroom. They pointed a revolver at us and I was frightened and ran away. I ran across the street and I saw Proffitt and Hill come out and put Smith and Hom Hong in an automobile and they drove away.

#### CROSS-EXAMINATION.

(Page 110 of Reporter's Transcript) I am a partner of Hom Hong. I saw Hom Hong pull out the money from inside his blouse, and then he put it back in his pocket. I saw opium spilled out of those cans on some newspaper that was put on my bed, and it leaked out and damaged the newspaper instead of my bedsheet. Proffitt had on a police uniform with big brass buttons, and also a cap and a mustache. Hill

(Testimony of Billie Wong Tong.)

had on a hat and wore a longer mustache and wore civilian clothes.

TESTIMONY OF BILLIE WONG TONG FOR  
THE GOVERNMENT:

BILLIE WONG TONG, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 126 of Reporter's Transcript):

My name is Billie Wong Tong. I have lived in Los Angeles since 1917. I know Hom Hong--was with him on Sunday night on February 9, 1919, and I took him up to the Police Station. That was on a Sunday night, a little after ten o'clock. I saw the defendant Hill there. He was coming down from Hill Street down towards Broadway, and towards the Police Station. Hom Hong was with me at the time. (Page 129 Reporter's Transcript).

Q What did Hill do?

MR DOMINGUEZ: That is objected to on the ground that it is incompetent, irrelevant and immaterial, calling for hearsay and after the consummation of the alleged conspiracy.

THE COURT: Objection overruled.

MR DOMINGUEZ: Exception.

Q BY MR LAWSON: Just describe now what took place while Hill was there.

(Page 130 of Reporter's Transcript) I saw Mr. Hill was making a quick turn and went right in the office where Captain Home's office is. Hom was pointing at him at the time.

(Testimony of Mrs. Teddie Neville.)

TESTIMONY OF MRS. TEDDIE NEVILLE FOR  
THE GOVERNMENT:

MRS. TEDDIE NEVILLE, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows: (Page 131 of Reporter's Transcript)

My name is Mrs. Neville. I know the defendant Hill and also the defendant Proffitt. Hill introduced Proffitt to me some time after the middle of January, 1919, at the Crystal Apartments, in Los Angeles. The time I met Proffitt I met another man who Hill introduced to me as a Secret Service man. He was a very large man, angular, and wore glasses. Hill introduced the other man to me.

(Page 133 of Reporter's Transcript) Q What did he say about him, if anything?

MR DOMINGUEZ: That is objected to as not in evidence that she said anything about him.

THE COURT: I overrule the objection.

MR DOMINGUEZ: Exception.

At that time he said something in regard to an eye. Hill said, "You would know he had one eye." I saw Mr. Hill the next day after this; had a conversation with him in the presence of the landlady, and the landlady asked me to keep Hill until she could get dressed and go down to the room to dinner with him, and Hill said, "I beg your pardon, I have been drinking some. I just killed a quart of whiskey with my cousin, who has returned from the service," and he



(Testimony of Mrs. Teddie Neville.)

said that Smith or "that man last night was not a government detective. He is a hop peddler" and he said, "We caught him with the goods on," and that he was the only man who ever stuck a gun in his ribs and made him hold up his hands, and he said, "We have a deal on about getting money; others get theirs and I will get mine," and he said, "I have starved my wife and baby for three years on one hundred and twenty-five dollars a month and I intend to get mine." I asked him if he wasn't ashamed to put that stuff out in the world. He said, "No, we will have it and the money both. They will not get it." He also said he was going to buy an automobile this summer.

#### CROSS-EXAMINATION.

(Page 137 of Reporter's Transcript) I had never heard of Proffitt or Hill before meeting them in the latter part of January, 1919. I never sent for Mr. Hill or Mr. Proffitt on that day, or this man Smith. On the day that I met Hill the landlady brought Mr. Hill to my apartment and she asked me to go to dinner with Mr. Hill. Mr. Proffitt came in a machine with the other gentleman and they came in front of my apartment. Mr. Hill took me outside and introduced me to Mr. Proffitt as his brother officer. That was on the curbstone in front of the house. I went to dinner that night with those gentlemen to the Cafe Maison Pierre. The landlady did not go. They had two women with them in the machine. I didn't know the names of the women. I was not introduced to the

(Testimony of Mrs. Teddie Neville.)

women. Prior to this occurrence, had never seen Hill in my life and had never been introduced to him nor Proffitt. One girl in the machine was much intoxicated. The men had been drinking, according to Mr. Hill's statement to me later. I didn't know these people had been drinking until I got in the machine. I didn't know that Hill was intoxicated. He was a stranger to me. He looked very good. He wasn't hog drunk. I was coaxed into going to the dinner party. My husband was not at the Crystal Apartments at the time of this party. He was in the service in Camp Lewis. After the dinner party I returned directly to the Crystal Apartments. Mr. Hill came back and the big man with the other lady. Mr. Proffitt's little girl was so drunk that she had to leave. The next afternoon when Hill came to the apartment again the landlady brought him to my apartment and asked me to entertain Mr. Hill until she could dress and go down to dinner with him. I don't remember how long he was there. I never saw Mr. Proffitt but the once. Mr. Proffitt was never in the apartment house to my knowledge and I did all my talking with Hill. Mr. Proffitt had nothing to say, never discussed at any time opium or anything like that. Mr. Smith never took any part in the conversation that I had with Hill.

(Testimony of C. A. Jones.)

TESTIMONY OF C. A. JONES FOR THE  
GOVERNMENT:

C. A. JONES, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 156 of Reporter's Transcript):

I am a member of the police department of the City of Los Angeles. I know the defendant Hill; I had a conversation with him about February 9, 1919, in the police detective bureau, at headquarters; there was no person present except Hill. At the time he was not under arrest. Hill at that time was a police officer. I told him at that time that I had heard what a Chinaman had told me; I told him that I had been called down to an attorney's office--Paul Schienck's office--and had been requested by Mr. Schenck to listen to the story of a Chinaman they called Hom Hong, in company with three other Chinamen, one whom I remembered as Quong, I think, or the owner of a place in Pasadena. Then I told him they had made this statement that he, or a man that they called Len Toy, or whatever name they used, that worked in Chinatown, and kept calling by the name of Hughes. And I asked him if he ever worked in Chinatown, and he said he had sometime in the past; and I told him that the Chinaman had said that they had been held up and robbed of \$4,500.00, and the robbery took place through the supposed transfer of some opium. He said he knew nothing about it. I told him that I didn't come there to see him, because I didn't think it was

(Testimony of C. A. Jones.)

him that I wanted to see; but when they called the fellow "Hughes," I could not think of any name of Hughes and I thought it might be Hughson, a boy that I knew. Well, he says, "There is nothing to it, Mr. Jones, not a thing. I could prove an alibi forty miles long if necessary." And he did tell me that he was at someone's house on this Sunday evening, but whose house I don't remember, until a certain hour, and then came to work, or later in the evening came to work. And then I told him this: I said, well, the Chinaman had said that he met with a sergeant of police when he reported this matter at the station, which was about eleven o'clock P. M., and the sergeant had referred him to the chief, and I told him for that reason I didn't think I would take any active part. I said, "If you have done anything wrong, you know that and I don't." He said, "Positively not." Well, I think he made this statement: that he probably would see the chief himself and explain his end of it, and he also said something about Hom Hong -he would take a gun and go and kill him if he didn't lay off of it, or something like that. I forgot just how he used it, but when I told him that Hom Hong had specifically identified him, not by name other than a Chinese name, but that he knew him by sight, and had seen him standing on a Sunday evening when the Chinaman came to the station, which was about eleven o'clock, to report the matter, he told me that if Hom Hong didn't lay off of him he would just take a gun and kill him, or words to that effect.

(Testimony of C. A. Jones.)

CROSS EXAMINATION.

(Page 160 of Reporter's Transcript.) Hill told me that Hom Hong was telling a falsehood about him; in fact, he denied in general everything in connection with the matter and said that he would go and see the Chief of Police himself about the matter. I told him that I was taking no active part in the matter and had no assignment. I further told him that the man had referred the matter to the chief's office. Hill told me that he knew Hom Hong and had arrested him. He said that Hom Hong was a peddler of opium and that there might be some feeling between Hom Hong and himself; also said that Hom Hong was an old offender in selling opium.

TESTIMONY OF D. McD. JONES FOR THE  
GOVERNMENT

D. McD. Jones, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 165 of Reporter's Transcript):

I am a police officer in the City of Los Angeles, detailed in Chinatown. I know Frank Edmondson, and arrested him on the evening of February 21, 1919, about 6:40 P. M. The arrest was made at Wilmington and First Streets in Los Angeles. At the time Sergeant Jarvis and Officer Littlejohn accompanied me. I found one can of opium in his possession. At the time Edmondson stated that if we knew who the can of opium belonged to, it would cause a great deal of trouble; that he, Edmondson, was expecting a good

(Testimony of D. McD. Jones.)

job on Monday and that if the arrest was made he would lose it. Edmondson had a room at the Sherman Hotel, No. 312. We were there on the evening after the arrest of Frank Edmondson, the 21st of February, 1919. Sergeant Jarvis and Officer Littlejohn were present.

TESTIMONY OF GEORGE M. LITTLEJOHN  
FOR THE GOVERNMENT:

GEORGE M. LITTLEJOHN, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 169 of Reporter's Transcript):

I am a police officer of the City of Los Angeles. I know Frank Edmondson. I arrested him on the 21st of February, 1919, at First and Los Angeles, about 6:40 P. M. At the time of the arrest I took a can of opium, United States Exhibit No. 3, from his pocket. I put identification marks on the can myself. I saw United States Exhibit No. 2. The first time I saw it was in the defendant's room at the Sherman Hotel, Room 312. At that time Officer Jones and Sergeant Jarvis were present. Edmondson stated at that time, "You would be surprised if you knew who this belonged to." He said that the facts of the case implicated two of my brother officers. He made that statement down in the automobile at First and Los Angeles. Mr. Jones was not there at the time; neither was Sergeant Jarvis there. The two of us were alone.

(Testimony of Charles Henry Jarvis.)

TESTIMONY OF CHARLES HENRY JARVIS  
FOR THE GOVERNMENT:

CHARLES HENRY JARVIS, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 175 of Reporter's Transcript):

I am a police officer of the City of Los Angeles, detailed in Chinatown. I know Frank Edmondson, and was present at his arrest on the 21st of February, 1919, on First Street forty feet east of Los Angeles. Officers McD. Jones and Littlejohn were present at the time. I have seen United States Exhibit No. 3; I first saw it in Littlejohn's hands when he took it out of the pocket of Edmondson at First and Los Angeles streets. I have seen United States Exhibit No. 2. I found that in Edmondson's room in the evening a little after seven o'clock. I found that opium before Lefty James arrived at the room. There was another man that came with James; he was not an officer. He said that he had a case that he wanted Mr. Edmondson to work on. Mr. Edmondson made a statement at the time that he was arrested; he said, "Well, Sergeant, if you knew who this belonged to, you would be surprised," and I told him I didn't care who it belonged to. He said that I was doing him an awful injustice; that he was expecting a good position on Monday. I told him it didn't make any difference about that to me.

(Testimony of Charles Henry Jarvis.)

(Page 177 of Reporter's Transcript) MR. LAWSON: United States Exhibits marked 2 and 3 for identification are now offered as evidence, your Honor.

MR. DOMINGUEZ: To which we object on the ground that the same are incompetent, irrelevant and immaterial, without the issues of this case, no proper foundation having been laid.

THE COURT: The objection will be overruled.

MR. DOMINGUEZ: Exception, your Honor.

TESTIMONY OF WILLIAM FRANK EDMONDSON FOR THE GOVERNMENT:

WILLIAM FRANK EDMONDSON, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 179 of Reporter's Transcript):

My name is William Frank Edmondson. My business is that of a private detective. I have pleaded guilty to the present indictment. I first met Hill in 1917. I know Proffitt. I have known Proffitt about two years. I have seen the two cans of opium marked "United States' Exhibits Nos. 2 and 3." I saw them first when Mr. Hill brought them to my room. That was on the 16th or 17th of February. At that time he brought seven cans wrapped up in a newspaper. Before that time Hill and myself had a conversation at 16th and Figueroa on the corner, at which place Mr. Swan and Mr. Proffitt were in a machine about ten feet away. Swan is a partner of mine. Hill at that time says he had a friend in a little trouble and that



(Testimony of William Frank Edmondson.)

he wanted to help him out, and he wanted me to help him. He asked me to take seven cans of opium to Chinatown and find out if it was the real stuff or not, and then he wanted me to sell it for him. I told him I didn't know whether I could do it or not. We did not have an understanding at that time. We just talked a few minutes about it. I saw Mr. Hill the next morning and he brought the seven cans up to my room, 312 Sherman Hotel, 314 West Fourth Street, Los Angeles, and he said he had brought the stuff there, and went on to explain that he was helping a friend out of some trouble. He said he wouldn't ask me to do anything wrong, only he was helping this friend himself. No person was with Hill at the time. I got in touch with some Chinamen in Chinatown and one Chinaman came to my hotel and he offered me \$90 a can for the opium. I told him that I would let him know; that I couldn't take that little money for it. I then saw Hill about three or four times and talked with him over the phone. I saw him at Solomon's dance hall and Hill wanted to know if I had any luck. He told me to do the best that I could. Then he told me to take the \$180 for the two cans. I sold the opium to the Chinaman and took the money to Solomon's dance hall and gave it to Hill. He said at that time he didn't know if that money was enough to help his friend out. He said to me that there was nothing in it for me, but just helping his friend, and he appreciated it and hoped that I could be reimbursed, that he could do something for me. The next time I saw

(Testimony of William Frank Edmondson.)

Hill I was in jail. I saw Hill several times before this and we talked about opium. Hill came up to my room at different times and Proffitt came up with him. Hill was up on Wednesday night, and Proffitt stayed downstairs, I heard afterwards, but didn't see him. Hill and Proffitt came up to my room Thursday morning; it was early. They came up to take the other opium away that I couldn't sell, and said he thought he would take the stuff away, back to his friend; said I had no luck. I told him he could do whatever he felt like. He said "If you haven't any luck the next day, we will come and get it." The next day they came after the stuff and Hill said, "I guess I will take it away if you have no prospect." Then we talked about the price of it and I told him I couldn't get but \$90- -those fellows wouldn't pay that, and we talked a few minutes and I think Proffitt said, "Well, I hear it is selling for \$120 a can in San Francisco," and I said, "You can't get it here." I took four more cans down to Chinatown and I sold three of them and the other one I had in my pocket on the way back and when Sergeant Jarvis talked to me and then took me to jail. I saw the defendant Hill when I was in jail. Hill wanted to know whether I was going to squeal about the deal. I told him I wasn't that kind, but I didn't know what kind of trouble he had got me into. I don't remember all I said.

#### CROSS-EXAMINATION.

(Page 200 of Reporter's Transcript) I was arrested on the 21st of February, 1919. The first time

(Testimony of William Frank Edmondson.)

that Mr. Hill ever discussed opium with me was on the 17th of February, 1919. I never had any conversation at any time or place with Mr. Proffitt about opium. The time that Mr. Hill came to my room Mr. Proffitt never said one word, except that he had heard that opium was selling for \$120 a can in San Francisco. Mr. Proffitt was only in my room one time and that was on the 21st of February. I told Hill at the police station when I was arrested to get in touch with "Lefty" James, the police officer, and also my lawyer. At no time did I ever see anything that looked like opium in the possession of Mr. Proffitt and I never gave Mr. Proffitt a single penny from the sale of any opium.

TESTIMONY OF OSCAR SELLIER FOR THE  
GOVERNMENT:

OSCAR SELLIER, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 227 of Reporter's Transcript):

I am night watchman of the Washington Building. I saw the defendants Hill and Proffitt on the 22d day of February, 1919, in the Washington Building, between the hours of three and four in the morning. One was standing in the light and the other was standing back. Mr. Proffitt stood in front of me and they asked me to take them up to Mr. Edmondson's office in room 1106. I refused them and they told me they were police officers. Mr. Proffitt did most of the talking and I told them no, it was after hours and I

(Testimony of Oscar Sellier.)

couldn't take them up. They pulled out their badges and showed them to me. Hill said, "If you don't take me up, I will send you to jail at six o'clock in the morning." I told them that no person was in evidence in his office. I had never seen these men before.

(At this point it was stipulated and agreed by and between counsel for the Government and the defendant that the contents of the cans, and both and either of them, described as United States' Exhibits No. 2 and 3, contained opium prepared for smoking.)

TESTIMONY OF MRS. GEORGE FISHER FOR  
THE GOVERNMENT:

MRS. GEORGE FISHER, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 235 of Reporter's Transcript):

I live at 519 West Sixtieth Street, Los Angeles. I know the defendant Hill, but am not acquainted with defendant Proffitt. I saw Hill in the month of February, 1919, at 535 West Sixteenth Street. He came over to use our telephone during his wife's illness. At that time Mr. Proffitt called him on the telephone and a Chinaman and others, but I don't know who they were. I never listened to the conversation. I have seen Mr. Proffitt out at Mr. Hill's house when his wife was sick; I think it was the latter part of January or February. I knew the Chinaman called Mr. Hill up because Mr. Hill told me.

(Testimony of Cyrus D. Rhodes.)

TESTIMONY OF CYRUS D. RHODES FOR THE  
GOVERNMENT:

CYRUS D. RHODES, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 241 of Reporter's Transcript):

I am employed at the Sherman Hotel, Los Angeles. I know Frank Edmondson who lives at the Sherman. He lived there about two years. I am not acquainted with Hill. I saw the defendant Proffitt in Frank Edmondson's room, 312, at the Sherman Hotel about the 20th day of February, 1919, in the morning near seven o'clock, or a little after seven.

TESTIMONY OF JAMES A. MCKAIN FOR THE  
GOVERNMENT:

JAMES A. MCKAIN, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 243 of Reporter's Transcript):

I was hotel clerk at the Sherman Hotel from January 1st until the fore part of April, 1919. I know the defendants Hill and Proffitt by sight. I saw Proffitt in the lobby at the Sherman Hotel some time during January or February, 1919. I remember the defendant Hill more distinctly. He came in the hotel one evening with Edmondson's business partner. I never had a conversation with either of them. It was twelve o'clock at night when I saw Hill. I was running the elevator and I took him to the third floor where Mr. Edmondson's room is located. I knew that both Mr. Hill and Mr. Proffitt were officers of the law.

(Testimony of Gertrude Josephine Moran.)

TESTIMONY OF GERTRUDE JOSEPHINE  
MORAN FOR THE GOVERNMENT:

GERTRUDE JOSEPHINE MORAN, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 247 of Reporter's Transcript): I am employed at the Sherman Hotel, Los Angeles, as an elevator runner. I know the defendants Hill and Proffitt. I saw them in the Sherman Hotel about the 18th of February, 1919, at 6:30 in the morning. I took them up to the third floor in the elevator. They asked me if Frank Edmondson was in his room. I brought them down again about quarter past seven. When they went to the room I did not see anything in their hands.

TESTIMONY OF ETHEL A. LAIETZKY FOR  
THE GOVERNMENT:

ETHEL A. LAIETZKY, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 322 of Reporter's Transcript):

I live at 1127 Louida Terrace. I formerly lived at the Crystal Apartments. I have known the defendant Hill for almost a year. That was the last place I saw him. That was some time the first of January or the middle of January to the first of February. I knew that Mrs. Neville had been out to dinner with him. I had a conversation with him at that time. He told me he couldn't live on \$100 a month; his family had been sick, his expenses were high. I asked him who this man Smith was and he said he was a man he had

(Testimony of Ethel A. Laietzky.)

arrested some time previously for having opium in his possession, and that he had \$500 on him at the time and that he had split the \$500 with he and Proffitt. He told me he knew where there was a suitcase with \$10,000 worth of opium in it. I asked him if he realized what he was doing and how hard it would be for his family if he would get into trouble. I asked him what he meant by telling Mrs. Neville about opium that he was going to sell, but he didn't give me any answer as to what he was going to do at all about that. I told him what Mrs. Neville had told me, that he was going to sell the opium and that they were going to split the money four ways, they were going to get \$4300 for the opium. He didn't say anything about it at all. He didn't give me any answer when I asked him about it. Hill introduced "Cockeye" Smith to me, "My partner, Mr. Proffitt."

"Cockeye" Smith was a tall, slender man, very well dressed and wore glasses, and there was something wrong with one of his eyes. I told Hill to take Smith out of the house; he didn't look good to me. I didn't think he was the right kind of a man. Mr. Hill introduced Smith to me as Mr. Proffitt, but the defendant here is not the man who was introduced to me at the apartment as Mr. Proffitt.

#### CROSS-EXAMINATION.

(Page 328 of Reporter's Transcript) I only saw Mr. Hill three times in my life. I know Mrs. Neville. She came to my house, the Crystal Apartments, she

(Testimony of Ethel A. Laietzky.)

told me from Seattle. She had been a manicurist before she was married but she did not work when she was at my house. I introduced her to Mr. Hill some time in January. I introduced him to her in my apartment, Room 106. He did not say at that time that he was drinking or state in the presence of Mrs. Neville that Smith was not a Government detective, but that he was a hop peddler. I never took Hill to the door of Mrs. Neville's apartment. Mr. Hill had not been drinking so that you could notice it. Mr. Hill never drank in my presence. Mr. Smith or Mr. Hill never discussed opium selling at the time I introduced Hill to Mrs. Neville. I never met Mr. Proffitt in my apartment or in the Crystal Apartments or anywhere. I never saw the gentleman, never spoke to him. I never heard any conversation at all in front of Mrs. Neville when I was talking to Hill.

TESTIMONY OF MRS. EVA B. AMMONS FOR  
THE GOVERNMENT:

MRS. EVA B. AMMONS, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (Page 1000 of Reporter's Transcript):

I am the mother-in-law of Mr. Hill, the defendant in this case. I did not see Mr. Hill on February 9th. At eleven o'clock Sunday morning he left our house. I didn't see him any more that day. We lived at 4226 South Grand Avenue, Los Angeles. Hill was not present any time after eleven o'clock on that Sunday, February 9, 1919. I saw him Saturday evening before,



(Testimony of Mrs. Eva B. Ammons.)

about 7:30 o'clock. At that time he rang the door bell and I went to the door. He was masked. He was disguised. He wanted to speak to my husband. He says, "I want to see Mr. Ammons." And I just stepped back in the room. I didn't recognize him; and I stepped back in the room and I says, "Papa, there is some gentleman wants to see you." And papa got up and went to the door, and he says -- he didn't recognize Will at first, but I stood back, and directly they both laughed, and papa, he laughed. He said, "Will," he says, "what are you doing fixed up like that?" And he went on to explain, and told him; and papa told him after he come in the room (page 1002 of Reporter's Transcript) that he would have to put on a different disguise to fool people like that. He says, "Will," he says, "you couldn't fool me." And he went on to ask him why he was disguised, and he said him and Howard Proffitt was going to Pasadena tomorrow night at eight o'clock to a masquerade ball to catch some fellow there, to do detective work; and we told him after he come in the dining room that he would have to put on something else to disguise his self more than that. And we even told him if he would take off his little billy-goat whiskers that it wouldn't give him away half as bad, and it disgusted Will, and I don't know whether he done away with his billy-goat whiskers or not.

That was on Saturday night, February 8, 1919. After that he came back the next morning about nine o'clock. That was on Monday morning. He came in

(Testimony of Mrs. Eva B. Ammons.)

and talked to me and his wife. He pulled out a roll of money from his pocket, wrapped in a cloth, and he handed it to me and he said, "No, there is a thousand dollars; put it away." He said, "You know that Nancy is here with you sick." Nancy is his wife. He said, "I am not at home, only coming and going, and there are many burglars around." I asked him why he didn't take it and put it in the bank. He said he didn't want to. My husband asked him to put it in the bank. My husband said, "Will, I will take it and put it in my name," but he wouldn't let him do it. Well, I kept the money two or three days. Then he came and took it away from me. He took it home and put it in his clock on the mantle. Then he brought it back again and gave it to me again. This was about two or three days after. I kept it two days. Then he came back and got it the last time. Then my daughter had it and brought it and gave it to my husband and told him to keep it until Mr. Hill asked for it.

#### CROSS EXAMINATION.

(Page 1005 of Reporter's Transcript).

I was forcibly ejected from Mr. Hill's home. He used very violent language towards me and he ordered me never to appear in his house again. He said I told lies about him and that I was constantly nagging and abusing him, and told me that I must refrain from doing all those things. He told me to keep away from his house.

On a subsequent occasion when my daughter was sick, I went to his house. That was in the month of

(Testimony of Mrs. Eva B. Ammons.)

January. I went, however, to Hill's house on the 11th of January, 1919, when my daughter was sick. Hill was also sick. He was in bed. We made up.

I never saw Mr. Flavin to my recollection in my life. (Mr. Flavin produced in court). No, sir, I don't know anybody by that name.

I know Mrs. Mitchell who lives in Lankershim, and I know her husband. I met them twice. I remember making a visit out at Lankershim where I met Mr. Mitchell and Mrs. Mitchell on the 20th of April, 1919. Will, his wife, my husband and myself went out there in Mr. Hill's car.

On the 10th of February, 1919, Hill gave me a little white cloth rolled up and he told me, "Here is a thousand dollars." The cloth was wrapped up in a piece of paper. It was about five inches long. There was another little bundle underneath that one, like silver money tied up. It was all in a white cloth, but the greenbacks, or whatever it was in there, paper money, I suppose, was in a roll and then underneath here there was another little bundle tied with a white cloth, and the weight of it felt like it was silver money. I did not open the package. I never saw the contents of it; never took any of the money out for my own use; didn't see the silver money in the package. I gave the package back to Hill. When I had the package I put it in the closet in a sofa pillow. Nobody saw me do that. I was all alone. I didn't show the package to a soul. I only took Hill's word for it that the package contained money.

(Testimony of Mrs. Eva B. Ammons.)

Our house was a little four-room flat. My husband was working at the time. He wasn't there. That was in the morning between eight and nine o'clock, Monday morning. I never showed the package to my husband nor my daughter.

Now that I see them, I am acquainted with Mr. Flavin, Mrs. Flavin, Mrs. Rose Earl, and Mrs. Mitchell. I have met them all. Mr. Hill introduced me to them. I met these people at Lankershim about four o'clock in the afternoon of April 20, 1919. Mr. Hill and his wife and Mr. Ammons were in the same automobile with me when I met these people.

TESTIMONY OF MILLARD A. AMMONS FOR  
THE GOVERNMENT:

MILLARD A. AMMONS, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 1037 of Reporter's Transcript):

I am the father-in-law of the defendant Hill in this case. I saw Hill on February 9, 1919, between eight and eleven o'clock in the morning, at my house at 4226 South Grand Avenue. He stayed there until about eleven o'clock. I did not see him any time after that. It was the next day or the day after that that I saw him again. I had no conversation with him. (Page 1039 of Reporter's Transcript).

Q Did you ever talk to the defendant Hill at any time after February 9, 1919?

A Oh, yes, I talked to him, you might say every day around my house; talked to him off and on.

(Testimony of Millard A. Ammons.)

Q What were you talking about?

MR. DOMINGUEZ: That is objected to unless the proper foundation is laid.

THE COURT: The testimony now must be rebuttal testimony (page 1040 of Reporter's Transcript) or impeachment testimony of Hill. And you have got necessarily to draw the witness's attention to the particular thing that you want him to testify about.

Q BY MR LAWSON: Now, did you ever have any money that belonged to the defendant Hill?

MR. DOMINGUEZ: That is objected to on the ground that it is not rebuttal, incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. DOMINGUEZ: Exception.

(This witness corroborates the testimony of Eva B. Ammons, in regard to the money that the defendant William E. Hill left at the Ammons home, and also in regard to the appearance of the defendant William E. Hill at the said Ammons home on the night of Saturday, February 8, 1919, in disguise, and his statement of the proposed visit to Pasadena on February 9, 1919.

TESTIMONY OF MRS. W. E. HILL FOR THE  
GOVERNMENT:

MRS. W. E. HILL, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows (page 1059 of Reporter's Transcript):

(Testimony of Mrs. W. E. Hill.)

I am the wife of the defendant William E. Hill. I live at 4238 South Grand Avenue, Los Angeles, with my parents. I have talked about the facts of this case with my husband, the defendant. I talked to him before February 9, 1919, and after February 9th. He told me he was going to Pasadena. He said he was going there to a masquerade ball and he said he was going there to arrest a fellow, and then on February 8th he came to my father's house and tried to disguise himself to my father. He said he was going over to Pasadena with Mr. Proffitt, the defendant in this case.

I don't know Roy Holmes, and the only time I discussed Roy Holmes with my husband was when I was sick. Two of my dish towels were missing and I asked my husband about them and he said, "They are down to Roy Holmes' garage." He said, "I took them down there to make up." They were dish towels. He said that they were for his make-up and for the make-up of Mr. Proffitt. He said that they were going down there to fix up for the masquerade ball at Roy Holmes' garage.

#### CROSS-EXAMINATION.

(Page 1065 of Reporter's Transcript) I am now suing my husband for divorce.

#### TESTIMONY OF ROY B. HOLMES FOR THE DEFENSE.

ROY B. HOLMES, called as a witness on behalf of the defendants, being first duly sworn, testified as follows (Page 263 of Reporter's Transcript):

(Testimony of Roy B. Holmes.)

My name is Roy B. Holmes. My business is at 1350 South Bonnie Brae, City of Los Angeles. On February 9, 1919, I lived with my wife and family at 1138 West 53d Street. I have an automobile machine shop. I am acquainted with the defendant Profit. I have known him for about ten months. I remember having done work on Mr. Proffitt's car in the month of February. I remember a Sunday early in February when he was there at my place of business with Officers Burgess and Ingraham. That was, I believe, February 8th or 9th. It was on Sunday, Sunday the 8th. My shop records show that.

Q BY MR DOMINGUEZ: Now, so that the jury will get the exact date and time, please look at the shop records.

MR LAWSON: Just a minute, though, before you do that. Did you make those records yourself?

A I made the original records, yes sir.

Q Just point out which ones you made, in your own handwriting.

A I made this shop record right here (indicating).

Q Referring to that card? A Yes.

Q Is that the only one you made? A Yes sir.

Q BY MR DOMINGUEZ: Now, what does that show with reference to February 9, 1919, if anything?

MR PALMER: We object to that, as to what that shows.

MR DOMINGUEZ: I will withdraw the question.

Q Does that refresh your recollection as to the day on which you did that work for Mr. Proffitt?

(Testimony of Roy B. Holmes.)

A The record was written out on Sunday, February 8th, I think it was.

(Page 267 of Reporter's Transcript) Mr. Proffitt arrived there on that Sunday at about six-thirty in the evening. I was the only one in the shop at the time that he arrived and Mr. Ingraham and Mr. Burgess came with him. They came in Mr. Proffitt's automobile. The time that Proffitt brought his car there, I inspected the car, but I refused to work on Sunday. I left there about eight o'clock or five minutes afterwards in the evening. Mr. Proffitt had gone two or three minutes before me with Mr. Ingraham and Burgess. They all went out together. From there I went home. It took me fifteen or twenty minutes to get home.

#### CROSS-EXAMINATION.

(Page 270 of Reporter's Transcript) I have done work on Mr. Proffitt's car on numerous occasions previous to this time. He would be in once or twice a month, sometimes three or four times a month, on small jobs. They never amounted to a great deal. About the first time I did work for Proffitt on his car was along back in August of 1918. The car that I worked on for Mr. Proffitt was a Haines automobile touring car. On the jobs that we did for Proffitt we put in valves and ground valves and relined the brakes. I guess we have done pretty near everything in the way of minor adjustments on Proffitt's car. I couldn't specify any particular time or month before this last job that I did work on Proffitt's car. It prob-



(Testimony of Roy B. Holmes.)

ably happened every month. He had an Oldsmobile besides his Haines car. That was some time last fall. I didn't do the work on his cars myself. I have a good many men there. I presume my foreman did some of it. The work on the Haines car was done on the following day, that would be Monday. The foreman told me the work was done. I presume that he did some of the work on it. I have occasion to know because I have since referred to the records on the job and there is one time slip that is signed by my foreman and another time slip that is signed by another man in the shop. I believe that Edward Menier and Al Swayne did the majority of the work on the Proffitt car. On the Sunday I arrived at my garage about five o'clock and met Proffitt there about six-thirty. Proffitt had been over to my house at ten or eleven o'clock in the morning and asked me to come out and fix his car. I told him then I would be in my shop at five-thirty, and that we would start work on the car at seven o'clock on Monday morning I noticed the time very particularly because I had an appointment to go to a picture show and it would have necessitated my getting home somewhere around seven o'clock, and I kept watching the clock and when they drove up it had started to get dark. Mr. Proffitt had a key to the shop after that night. He did not have a key before. I left the garage between 8:05 and 8:10 and went home. I arrived home about 8:30. When Proffitt arrived at the garage that night I examined his car, told him what was the matter with it, and what would be necessary

(Testimony of Roy B. Holmes.)

to repair it. He asked me if he could borrow another car and I said that I would let him have one, provided he would take care of the car in good shape and be responsible for it, and I would let him take it and I would endeavor to get this car to run.

(Page 276 of Reporter s Transcript) Q Is that the Baptieste car? A It was, sir.

(Page 277 of Reporter's Transcript) Q Now, who is Baptieste?

MR DOMINGUEZ: That is objected to as not cross-examination, as incompetent and immaterial.

MR LAWSON: I think it will be very material before we get through, your Honor.

THE COURT: I think it is material. I will overrule the objection.

A Well, I can't interpret what you mean by "who."

Q He was a negro, was he not?

A He was a negro that lived somewhere around Central Avenue and 10th or 11th Street.

Q BY MR LAWSON: Now, don't you know that Baptieste was picked up by Proffitt and Hill when he had opium in his possession; that he was taken down to the police station, and that his car was taken away from him and put in your garage?

MR DOMINGUEZ: That is objected to as incompetent, irrelevant and immaterial and not proper cross-examination, and I ascribe the question as gross misconduct on the part of the District Attorney, the question having but one purpose, and that is to preju-

(Testimony of Roy B. Holmes.)

dice this jury against the defendant Proffitt on a collateral matter.

THE COURT: The objection is sustained. I will let the prosecution prove that either of the defendants put that car in that garage.

(Page 278 of Reporter's Transcript) Q BY MR LAWSON: Well, who put the car in the garage?

A I put it there myself.

Q Where did you get it?

A I picked it up on the street. It was broken down.

Q Then what did you do with it?

A I went over on Central Avenue and took my own car over there, and towed it in.

Q On Central Avenue? A Yes sir.

Q From whom did you get the car?

A Mr. Baptieste or someone called up my office and said their car was in front of a place on Central Avenue and wouldn't run, and I says, "We will be over there as soon as we can."

Q Was Baptieste under arrest at the time?

MR DOMINGUEZ: That is objected to as incompetent, irrelevant and immaterial and not cross-examination; and I again ascribe the question of the District Attorney as gross misconduct. This question is asked solely for the purpose of influencing this jury against this defendant Proffitt.

THE COURT: I don't see the relevancy of that question. The objection is sustained.

(Testimony of Roy B. Holmes.)

(Page 283 of Reporter's Transcript) Mr. Ingraham has had a key to my garage for a long time. I have met the defendant Hill. I think he was in the place once or twice previous to February or March 8th, whatever the date may be. I think he was out there once. He came out there to borrow a shot gun or something. I employed Mr. Proffitt two or three weeks after his arrest, as a machinist's helper.

I made the record on Sunday night of the work that was ordered to be done on the Proffitt car for the following day. I take care of the money end of the department in my business. On this specific job the card was written up on Sunday and as a rule I don't write those cards. The foreman usually writes those cards. The car was in my shop from Sunday until the following Tuesday morning--that would be February 11th. It was paid for two or three weeks, I think, after the work was done. I am not absolutely certain as to whether this was paid for two or three weeks after, or one week after. I am not certain as to when we got the money; it might have been a week. Mr. Proffitt paid for the car personally and I stamped the card. We keep that card as a record, and when the cars are not paid for, they are kept in one file, and when they are paid for we stamp our original card. I am positive that the car came into the shop on February 9th. It was the evening that these gentlemen was supposed to have committed some crime or something of that character--

(Testimony of Roy B. Holmes.)

(Page 291 of Reporter's Transcript) MR LAWSON: Now, wait a minute; I am not asking for that. I am asking you why, if you cannot tell the definite length of time in between when the car left your shop and when the car was paid for, why it could not have been that the car came into your shop on February 16th, the following Sunday.

A Why, I had reason to be impressed, because when the car came in it was a very unusual thing to go down on a Sunday and take in -

(Page 292 of Reporter's Transcript) Q Yes, but I am recalling to you, Mr. Holmes - -

MR DOMINGUEZ: I submit that the witness should be allowed to finish his answer.

Q BY MR LAWSON: Why could not it be the following Sunday?

MR DOMINGUEZ: I submit that the witness has a right to answer his question.

THE COURT: He can tell all the reasons he has got for saying that it was on February 9th.

MR DOMINGUEZ: Yes sir.

. . . . .  
(Page 293 of Reporter's Transcript)

MR LAWSON: Now, your Honor, we ask that this exhibit be offered in evidence - - slip of paper.

MR DOMINGUEZ: We have no objection.

THE COURT: Mark it Plaintiff's Exhibit 4, is it, Mr. Clerk?

THE CLERK: Plaintiff's Exhibit 4, your Honor.

(Testimony of Roy B. Holmes.)

Q BY MR LAWSON: Now, Mr. Holmes, I want to make this clear and give you another opportunity to think. Have you any other reason to offer why you recall it was on February 9th, other than it was a Sunday? Is that the only thing that you remember of this particular piece of work, is that it came in on a Sunday?

A Well, the fact that it was very unusual. I was in bed on a Sunday morning, and my children had just come home from Sunday school, and Mr. Proffitt drove up to my front door, and he knocked on the door, and my little girl went to the door and said there was a man there to see me; and I said to have him come in, and he came in and told me his car was running very poorly. I don't remember as he exactly stated what was the matter with it. And he requested me to go down to the shop and fix it up, that he wanted to use his car very badly; and I absolutely refused to work on a Sunday. And he made arrangements then -- he said something about he had a day off, or some of the boys had a day off, or something of that kind, and he wanted to know if he couldn't have the car taken down to the shop that night; that is, if I wouldn't go down there and open up the shop so that he could go in the shop with the car so we could get to work on it the next morning, because he thought, I presume, that it was just a mere matter of an hour or two's work on it.

Q And that all occurred on a Sunday?

A That occurred on a Sunday.

(Testimony of Roy B. Holmes.)

REDIRECT EXAMINATION.

(Page 294 of Reporter's Transcript) Q BY MR DOMINGUEZ: Now, you started to tell the jury there that you had told them it was February 9th because of the fact that you remember the arrest of Mr. Proffitt. Go ahead and tell - -

MR LAWSON: Just a minute. I object to that as improper redirect examination, your Honor. It is cross-examination of his own witness.

MR DOMINGUEZ: I beg your pardon.

(Page 295 of Reporter's Transcript) THE COURT: I was going to ask that question myself.

MR DOMINGUEZ: Yes.

MR LAWSON: I will withdraw the objection.

Q BY THE COURT: When did you first hear about Mr. Proffitt being in this trouble.

A Well, the first I remember of it was in the daily newspapers.

Q When was that?

A It was either February or March, I couldn't be sure as to the exact date.

Q When was your attention first called to this fact that he was in there on a Sunday with his automobile, after that? When did you first start to look it up?

A I believe Mr. Johnson had a man out there, and went through the records there, and I got all my records, and at his request I took those records up in his office and we went over the whole matter.

(Testimony of Roy B. Holmes.)

Q Is that the first time you attempted to fix the date that Mr. Proffitt was there with his machine?

A On that particular job, yes sir.

Q Then you hadn't your attention called to the controversy as to when it was that Mr. Proffitt was there, until you took the books up in Mr. Johnson's office? Then that was the first time that you thought to determine the date that he was there?

(Page 296 of Reporter's Transcript) A On that Sunday, yes sir.

Q And the only thing you know about it being the date of the month is the information you derived from that investigation?

A Yes sir; yes sir.

I have a bookkeeper down at my place of business. All our records are original records. They are usually made on little time slips that are fastened to our record. When a bill is paid it is stamped "Paid" right on the original entry. I showed my time slips and records to Mr. Johnson, the agent for the Government, and he took them from me. I told him that I would aid him in every manner that I could. When Mr. Saunders was out he asked me to appear and bring with me all the original records and slips, which I did. The handwriting on the time slip is made out in the handwriting of Mr. Menier. He was my foreman on February 9th. Mr. Menier is not working for me now. He started in business for himself about two blocks away from me. He left my employ some time in April. I allowed him to resign.



(Testimony of Roy B. Holmes.)

RECROSS-EXAMINATION.

(Page 310 of Reporter's Transcript) When I spoke to Proffitt on Sunday in the morning I told him I would meet him at half-past five. I told him, "I want you to be sure to be there, because I have an engagement tonight with my wife." And I had a couple of friends visiting me here from the East, and we were to go to--I think it was Grauman's picture show, and we tried to get to the show there at 7:30, and I tried to impress upon him to be there at 5:30. And I went down there; I was there about 5. And he didn't arrive, and I was very much put out because I thought it was a very big imposition all the way through. I gave him the key to the Baptieste car and the key to the garage. The reason I gave him the key to the garage was so he could bring the Baptieste car which I loaned him back and park it in the garage. My wife and I went to the picture show at 54th and Vermont. When I got home at about half-past eight my wife jumped all over me, so I said, "Well, we will go to this picture show up at the corner." So we got -- I think I had a bite to eat, and we got in my car and put my car in front of this picture show and went into the picture show.

CROSS-EXAMINATION.

(Page 340 of Reporter's Transcript) I testified here last Thursday, finishing at noon, and left the Federal Building in my own car in the company of the defendant Proffitt. On Thursday night last, May 29th, I talked with Oswald Ramsey down at my shop on Bon-

(Testimony of Roy B. Holmes.)

nie Brae, between Pico and Fourteenth Street, near the corner of Fourteenth Street; I was there with my wife. I went up to the front part of the shop and talked about this case. I asked him if he had been around there, and talked about what his recollection was.

(Page 341 of Reporter's Transcript) Q Now, Mr. Holmes, on that same Thursday night, May 29th, on the way from your shop on Bonnie Brae, between Pico and Fourteenth Street, the shop being nearer the corner of Fourteenth Street, from that point on the way to your home, which is 4815 South Normandie, you had a conversation with Mrs. Nellie Holmes, did you not? A Yes sir.

Q And it related to this case? A Some of it, yes sir.

Q Now, sir, I will ask you if at that time and place and in the presence of the parties there present, if this conversation did not take place between the parties already designated, or in substance this conversation took place:

A It did, yes sir.

Q (Page 342 of Reporter's Transcript) You stated or asked Mrs. Holmes if she remembered a Sunday last February when Mr. Proffitt was at your house. And then Mrs. Holmes said, "Do you mean the Sunday that Hill and Proffitt came while I was taking Hazel to Sunday school? And then you said, "That is the Sunday that I mean, but Hill was not with Proffitt." I said, "Yes, he was. Don't you remember? You told me that that was Hill and I afterwards told you that

(Testimony of Roy B. Holmes.)

Mrs. Merry said, after I described him to her, that he was the same man who came to borrow a gun while we were at Pasadena with the Kesters. Then you said to Mrs. Holmes at that same time and place and in the presence of the parties there present, "No, Hill was not there." Then Mrs. Holmes said at that same time and place and in the presence of the parties there present; "He certainly was." And then you said, at the same time and place, "Well, if he was, I didn't know it. I certainly did not see him." And then you further said, "It will be a good thing for you to forget it, if you saw him, for Hill is trying to prove that he was sick in bed at the time that they were supposed to have held up those Chinamen." And you further said, "It may be that you will be called on to be a witness. They had me down there today, and if you are called, you just forget that you saw Hill." Now, did that conversation, or the substance of that conversation, take place at that time and in the presence of the parties already designated?

A There was part of it; yes sir.

Q Now, just state what part of that conversation took place?

A Well, as near as I can remember the majority of it - I don't remember the exact words -

Q The majority of that conversation took place?

A Yes sir.

(Page 344 of Reporter's Transcript) Well, practically everything he said there. I don't know as it was just as he read it.

(Testimony of Roy B. Holmes.)

Q BY MR. LAWSON: Is the substance of everything that was related in that conversation--was that stated at the time?

A Practically so.

Q Practically so? A Yes sir.

Q Was that in regard to Hill being at your house? Was that stated at that time?

A Well, I couldn't exactly say, because I never saw Hill out there.

Q Well now, just state the conversation then that you had with Mrs. Holmes at that time.

THE COURT: In regard to Proffitt being there on that Sunday. That is what we want.

A I stated that I thought she was very much mistaken about Hill being out there because I did not see him. That is the only thing I remember in that respect.

Q BY MR. LAWSON: Didn't you tell her to forget it?

A I told her that I thought it would be a good thing for her to forget it, because I think she is mistaken now.

Q Because Hill wanted to prove an alibi -- that he was sick at the time?

A Yes, because I don't think he was there and --

Q Now, just answer the question, Read the question.

THE COURT: That is all right, Mr. Lawson. He is explaining.

(Testimony of Roy B. Holmes.)

THE WITNESS: I thought this way: It isn't very possible, I don't think, that she ever seen Hill, and it is very possible she would make a mistake in that respect; and if she would get up and make a mistake, why, she might make a misstatement.

Q And you were afraid that it would hurt the defendant Hill; is that it?

A No sir; I have absolutely no interest.

Q You have no interest? A No sir.

Q How far is it from your house to your shop?

A It is about 4.6 miles.

Q 4.6 miles? A Yes sir.

REDIRECT EXAMINATION.

(Page 346 of Reporter's Transcript) On Thursday, May 29th, I had a conversation with Mr. Ramsey in the front part of my shop. He is our night watchman. I asked him if he was on duty on this particular Sunday night. He said he was. I asked him what time he made his first call. He said he thought it was in the neighborhood of 7:30, something of the kind. I said, "Did you come in the shop?" He said, "No, I saw lights there and didn't bother you." I says, "What time did you come the next time?" He said, "It was about 7:45 or eight o'clock." And he told me where his beat went to, where he went from there, and came back. And at that time I heard someone coming up the driveway and I walked out. And he says, "Everything all right?" I says, "Yes; just some friends of mine here," and he walked away. He said he didn't see anyone there, except he saw some figures in the

(Testimony of Roy B. Holmes.)

office, figures of some people. I have already stated that those parties who were there were Mr. Ingraham and Mr. Burgess. Mrs. Holmes is my wife. The conversation between Mrs. Holmes and myself took place in my automobile going from the shop out to my house, and I think some of the conversation happened in the parlor; no one else was present at that conversation. At the time I was on the stand here Thursday I had a robbery occur at my place of business, and it was in reference to that robbery that the thing was brought about. A foreman of mine had quit, and he had been taking my men away from me in an underhanded manner, and Thursday one of these men left while I was here in the courtroom--took his tools, and in taking the tools took some fire extinguishers and some other things, and I was asking her in regard to that, because this same man has approached her on other subjects, and I was trying to find out something, because I intend to do something about it. Eddie Menier is that man's name. I asked my wife if he had come and told her any of these things, and she wouldn't state, and I asked her if she remembered this particular time that Mr. Proffitt was out to my house, and she said yes. I asked her if she remembered our going to the picture show; she said she did not remember that, and I asked her if she remembered we had an appointment with the Kesters. She said we had an appointment with the Kesters, but she said it was down at my aunt's house, and it was not to go to a picture show. And she also stated that on the Saturday night

(Testimony of Roy B. Holmes.)

previous to this, we had a house gathering and we had dancing and one thing and another, and it was, I expect, two or three o'clock in the morning when the people left. And it was the next day after that that I saw Mr. Proffitt out to my house. Sunday morning he came there before I got out of bed; I wasn't out of bed at all. And we conversed about that. I was trying to refresh her memory as to some of these details and she insisted on one thing, and I told her I thought she was mistaken. She insisted that Mr. Hill was sitting in the car outside, and I told her that I thought she was mistaken, because to my knowledge she had never seen Mr. Hill until afterwards when he came to borrow a gun. I didn't get out of bed until half an hour, I expect, after he left; I did not see his car that morning. I know Mrs. Proffitt, and have talked with her many times, I guess. I would know her if I would see her and hear her speak, but I wouldn't know her voice if she was in another room and heard her speak.

(Page 352 of Reporter's Transcript) Q Do you remember whether or not you talked to her on Saturday prior to the Sunday morning when Mr. Proffitt went to your house?

A No, I do not remember.

Q Do you remember whether or not she called you up to make an engagement with you, as to when Mr. Proffitt could see you?

MR LAWSON: Objected to, your Honor, as incompetent, irrelevant and immaterial, and hearsay. I do not see, your Honor, what possible connection any

(Testimony of Roy B. Holmes.)

statement that Mrs. Proffitt could make to this witness, would have.

MR. DOMINGUEZ: It will be brought to the attention of the defendant Proffitt, and it will be shown by other evidence that it was within his knowledge and at his request that this should be done.

THE COURT: Well, prove it by her. You can't prove it by this witness.

Q BY MR. DOMINGUEZ: Now, do you remember anything further, then, that you told Ramsey there in the place there that Thursday night, about this case, any more than you have related?

A No sir.

Q Do you remember anything more than you said to your wife about this matter, than you have already related?

A No, I do not.

THE COURT: In regard to this conversation over the phone; I may have been mistaken in my understanding about it, but what is it you are seeking to prove by this witness concerning Proffitt?

MR. DOMINGUEZ: I will prove, if your Honor please, that Mr. Proffitt got home and that he asked his wife, due to the fact that he was going right to bed, to call up Mr. Holmes. This was on Saturday--to suggest to Mr. Holmes the propriety of seeing him the following day with reference to fixing up his car; that Mrs. Proffitt did call up Mr. Holmes and that Mr. Holmes suggested to her at the time that Mr. Proffitt



(Testimony of Roy B. Holmes.)

should appear that Sunday morning, and in pursuance of that Mr. Proffitt did appear there; and, further, they agreed that he should meet him there that afternoon; brought to the attention of Proffitt, and had been at his request.

MR. LAWSON: Your Honor, I fail to see how it can be established through this witness over the telephone, that he may now relate -

THE COURT: You can prove that Mrs. Proffitt made an engagement with this witness.

MR. DOMINGUEZ: That is what I want.

THE COURT: To be at his house on Sunday morning.

MR. DOMINGUEZ: Yes sir.

MR. PALMER: Well, he has testified that he didn't know her voice.

THE COURT: I understand that. I just want to get my ruling right, that is all.

MR. LAWSON: I will withdraw my objection.

Q BY MR. DOMINGUEZ: Well, in order to refresh your recollection on that point, don't you remember that Mrs. Proffitt called you up while you were at your garage and told you that there was some trouble with the car? This was Sunday afternoon, a little after one o'clock, and that she requested that you make some engagement with Mr. Proffitt, and that you gave her your house number where Mr. Proffitt should go to see you the following morning?

A I may have done it, but I can't remember it.

MR. DOMINGUEZ: All right, sir.

(Testimony of Roy B. Holmes.)

A I know he called me up, but I don't remember any specific time that it was done.

Q I am asking about her, whether she called you up on that Saturday, if you have any recollection of it.

A I have no distinct recollection of it, no sir.

Q Now then, with reference to taking Mr. Proffitt the other day after he left the court room, what occurred? What was there about that?

A Well, I met him outside of the building here. My car stood here on the street, and he asked me if I would go out to dinner with him. I said, "Certainly."

Q Well, did you discuss the case with him?

A No. He said it would be better if he would say absolutely nothing about the case.

Q I want to ask you if at any time or place Mr. Proffitt or Mr. Hill, or any other person, mind you, any other person, has ever suggested to you, directly or indirectly, that you should appear in this court and give any testimony that was in the slightest way false and untrue?

A No, they have not.

MR. DOMINGUEZ: I think that is all, if your Honor please.

THE COURT: All right.

#### RECROSS-EXAMINATION.

(Page 356, et seq., of Reporter's Transcript)

BY MR. LAWSON:

Q Now, Mr. Holmes, in regard to this conversation that occurred in the house between you and your wife, have you stated all that conversation?

(Testimony of Roy B. Holmes.)

A Sir?

Q Have you stated all that conversation?

A All that I remember, yes sir.

Q In the house?

A Yes sir.

Q I will ask you if at that time and place, and in the presence of the parties there present, namely, yourself and Mrs. Holmes, that there wasn't this following conversation: Mrs. Holmes stated to you that you were mixed up with this man Proffitt in opium deals; and she further said, "Well, I have tried to get you to stay away from them and not mix into police affairs enough, and if you had been at home when you should have been, you would not have had it to say, that is, to testify." Then you said, "I never was mixed up or had anything to do with them." And then Mrs. Holmes said to you, "You certainly did. You seem to know all about that fellow you call 'Nigger Baptieste.'" And you said, "I did not." And then Mrs. Holmes said to you, "Well, I suppose you have forgotten that you told Mr. and Mrs. Schlotshauer and Mr. and Mrs. Kunkel and myself that the nigger's car that the Government was looking for at your shop, and that they were looking for it all over, and that you knew that there was opium in it, and you hadn't looked for it yet, but was pretty sure there was a secret place in the car where the stuff was hid." Then you further said, "You are driving me crazy. You always misinterpret things so." And then Mrs. Holmes said to you, "I told you that the car was in the shop, and the Govern-

(Testimony of Roy B. Holmes.)

ment had looked for it - -" No, you said that. You said this to Mrs. Holmes, "The car was in the shop, yes, and the Government had looked for it, but I never mentioned opium." Then Mrs. Holmes said to you, "You certainly did. And if they ask me to testify, I will ask Grace and Addie, and I bet they will remember it." And Mrs. Holmes further said, "What about 'Cockeye' Smith? I guess you forgot about telling me that you were going to San Diego with the sheriff to get him. And when you got back you told me that you had found him and had come back by way of Seal Beach, and had dinner there about three o'clock; and that you lied to me. You went to San Diego with a couple of women, and I suppose another man." Then you said, "I didn't." Then Mrs. Holmes said to you, "You did." Then you said, "Well, who told you, Addie?" And Mrs. Holmes said, "No, he did not, and it is none of your business who did, but I know you did." And you further said, "Well, there were two women in the crowd, but they were not with me. They were with the other fellows." Then Mrs. Holmes said to you, "I suppose you played chauffeur." Then you said, "Well, you are always picking fights with me. What have I done to bring this one on?" Then Mrs. Holmes said to you, "I am not fighting, but want you to understand that I won't lie for you or anybody else." And you said, "I don't want you to, nor nobody asked you to." Then Mrs. Holmes said, "You certainly did, just a few minutes ago. You asked me to forget that Mr. Hill was in the car with Proffitt. I

(Testimony of Roy B. Holmes.)

want you to understand that I won't lie. If I am called on to be a witness, I will tell the truth, if I can remember and be sure, and if I don't remember, I will say so." And then you said, "Well, is there anything good left of me?" Then Mrs. Holmes said, "Yes, there is. You are the best hearted fellow that ever lived," and you said, "Is that all?" Mrs. Holmes said, "When I said that, I mean the bottom of everything. If you would stay at home with your family and go out with decent people and treat my friends as you should, everything would go all right, every way. But as long as you go with a crowd like you have been, and have nothing to do with your family, you can never expect to be happy, for nobody can make you happy, me or any other woman." Then you said, "Don't worry. There will never be any other woman with me."

MR. COHEN: Read it all, Mr. Lawson.

MR. DOMINGUEZ: Yes, read it all. I think it all should have been read at one time.

MR. LAWSON: That is all right; I will read it.

Q Then you said, "I only hope that I can fix things inside of thirty days so that my children will never have to go without, and I will get out of the way. There is only one person that I know I can trust, and that is God." And your wife said, "You had better not be so sure of it, the way you have been living." Then you said, "Nellie, I had a nice surprise for you. Do you know what I am thinking of?" She said, "No." Then you said, "Are you sure?" Then Mrs. Holmes said, "Why, yes." Then you said, "Well, I don't know

(Testimony of Roy B. Holmes.)

whether to tell you or not, but I believe I will.” Then you further said, “I was going to surprise you by putting you in your own home inside of three months from now. I have had a big business proposition offered me, and it is still hanging fire, but if it goes through the least that I will make the first year will be \$20,000, and I am still in debt to Charlie Gorton \$5,000 or \$7,000. I am paying him when I can. But I was going to try to have you in your own home in about three months from now.” Mrs. Holmes made no reply. You further said you had changed the combination on the safe at the shop because you could not trust Eddie Menier, your foreman, because small amounts of money had been missed, also a book of Stevens-Duryea parts, and a list of Stevens-Duryea owners, which you thought Eddie probably had taken, as he was considering going in business for himself. Then follows the jurat, subscribed and sworn to.

(Page 359 of Reporter’s Transcript).

Q Now, did that conversation take place?

A It did, as near as I can remember.

Q That same conversation?

A As near as I can remember it, yes sir.

Q That has just been related to you?

(Page 360 of Reporter’s Transcript)

Q In substance the same?

A Yes sir.

Q All right. Is there any material part in that statement that you want to change now?

(Testimony of Roy B. Holmes.)

A Nothing that I know of. I don't know as that is my statement.

Q Is there any part in there that you might even think immaterial that you want to change?

MR. DOMINGUEZ: Well, now, he didn't make that statement.

THE COURT: The objection will be sustained.

MR. LAWSON: That is all.

MR. DOMINGUEZ: Please let me have that so I can read parts of it.

MR. LAWSON: Oh, no.

MR. COHEN: If your Honor please, we are entitled to that statement. There are parts of that statement that are not introduced to the jury.

MR. LAWSON: As to the parts that are introduced in evidence, your Honor, we will be very glad to do it.

THE COURT: I can't make an order on them to produce that paper. Proceed, Mr. Dominguez, in re-direct examination.

MR. DOMINGUEZ: We except to the ruling of the Court.

Q BY MR. DOMINGUEZ: Now, did you ever at any time ask your wife to appear in this court and tell a lie?

A Not that I ever remember, no sir.

Q Now, you ought to remember that, Mr. Holmes. Did you ever do so?

A No sir.

(Testimony of Roy B. Holmes.)

Q Did you ever tell her that you knew "Cockeye" Smith?

A No sir.

Q Did you ever tell her that you knew that there was opium in the Baptieste car?

A No sir.

Q Did you ever tell her that you had gone down to San Diego in that car--the Baptieste car?

A No sir.

Q Did you ever tell her that you had withheld information from the Government authorities that there was opium in that car?

A No sir.

Q Did you ever tell her that the car had a false bottom?

A No sir.

Q Did you ever tell her that any association that you had with any police officer or police official was corrupt?

A No sir.

Q Did you ever tell her that any of your associates with whom you were associated were corrupt or that they handled opium, or anything of that kind?

A No sir.

Q Did you ever tell her at any time or place, or anybody else, that you had been engaged in the opium traffic?

A No sir.



(Testimony of Roy B. Holmes.)

RECROSS-EXAMINATION.

(Page 363 of Reporter's Transcript)

It is not a fact that on the 9th day of February, 1919, that I arrived home about ten o'clock. It is not a fact that I arrived home nervous and frightened, and I did not pull down the shades in my house.

TESTIMONY OF MRS. NELLIE I. HOLMES FOR  
THE GOVERNMENT:

MRS. NELLIE I. HOLMES, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows: (Page a of Reporter's Transcript)

I live at 4815 Normandie Avenue. I am the wife of Roy B. Holmes, the witness called on behalf of the defendants. At the present time am living with my husband. I recall February 9, 1919; that was on Sunday. Mr. Hill and Mr. Proffitt came to our house that day and wanted to borrow a car. That was about nine-thirty in the morning. They came in a car. I wasn't at home when they came. I just passed them on the street and they were going to the house. Mr. Holmes told me they wanted to borrow a car. On that day my husband was in bed when Mr. Proffitt came to the house and I think he stayed in bed until about eleven o'clock or twelve o'clock, and he got up and went to his shop. He said he had to work on the car so Mr. Proffitt could take it out. He then went to the shop and didn't get home until about ten minutes after ten that night and when he got home he seemed to be terribly excited.

(Testimony of Mrs. Nellie I. Holmes.)

(Page d of Reporter's Transcript) Q What did he do when he came home?

A Well, he seemed to be terribly excited and - -

MR. DOMINGUEZ: Just a moment: Now, I move to strike that out on the ground it is not responsive.

THE COURT: I think it is responsive. Go ahead.

MR. DOMINGUEZ: Exception. It is hearsay - calling for hearsay.

MR. LAWSON: Just proceed, Mrs. Holmes.

A He came in and he pulled down all the front curtains - - something that never happens only once in six or eight years.

MR. DOMINGUEZ: Just a moment. I move to strike that out on the ground the same is incompetent, irrelevant and immaterial, without the issues of this case and not binding on either defendant, what Holmes told her.

(Page e of Reporter's Transcript) THE COURT: If I remember right, Mr. Dominguez, Mr. Holmes was asked these questions: "Weren't you excited when you got home?" and, "Didn't you go in and pull the curtains down?" and he denied it. Now, if that is so, this evidence is admissible.

MR. DOMINGUEZ: It is so, your Honor, and I beg your Honor's pardon. That is a fact, it is so.

THE COURT: The objection will be overruled. Proceed.

Q BY MR LAWSON: Just go on now, if there is anything else.

(Testimony of Mrs. Nellie I. Holmes.)

A What I mean by "six or eight years," I don't think they have ever been pulled down but twice since we are married, and that was twice since this supposed hold-up has happened.

MR. DOMINGUEZ: I move to strike out the last statement of this witness on the ground that the same is incompetent, irrelevant and immaterial, hearsay, her conclusion and opinion, and ask the Court to instruct the jury to disregard that statement.

THE COURT: Read the answer. (Answer read).

THE COURT: I will overrule the motion to strike out.

MR. DOMINGUEZ: Exception.

On the evening of February 9, 1919, I was home with the children. My sister had gone to church. I was home all day and expected Mr. Holmes to be home, of course, to dinner about six or seven o'clock and he didn't come and we waited until eight o'clock. He didn't come home until about ten minutes after ten o'clock that night and then he didn't eat any dinner. We went to bed shortly after that. We did not go out any that night; did not go to any moving picture that night. The next Sunday, February 16, 1919, I think we went to a moving picture show. Did not have any appointment to go to a moving picture show. We had no engagement with any relatives of Mr. or Mrs. Kester to go to a moving picture show on February 9th.

(Page 9 of Reporter's Transcript) Q Now, Mrs. Holmes - - Pardon me, your Honor, I haven't had a

(Testimony of Mrs. Nellie I. Holmes.)

chance to look at this transcript. Mrs. Holmes, did you have a conversation with Mr. Holmes on the night of Thursday, May 29th, on the way from his shop, which is on Bonnie Brae, between Pico and Fourteenth Street, the shop being near the corner of Fourteenth Street, from that point (page h of Reporter's Transcript) to your home?

A Yes sir.

Q And what parties were present at that time?

A No one.

Q Just you and Mr. Holmes?

A Yes sir.

Q Now, I will ask you, Mrs. Holmes, if this conversation did not take place, if not the exact words, in substance?

MR. DOMINGUEZ: Now, we desire to offer an objection to this question, on the ground that the same is incompetent, irrelevant and immaterial, calling for hearsay evidence outside of the presence of either one of these defendants.

MR. LAWSON: You understand, your Honor, this is impeaching testimony.

THE COURT: The question you are going to ask her now is the same question you submitted to Mr. Holmes?

MR. LAWSON: Yes, your Honor, the same question that was propounded to the witness Holmes. This is purely for the purpose of impeachment.

THE COURT: Under those circumstances, Mr. Dominguez, what objection have you got?

(Testimony of Mrs. Nellie I. Holmes.)

MR. DOMINGUEZ: None. I didn't know his explanation- -

THE COURT: All right.

MR. DOMINGUEZ: Of what he intended to do.

Q BY MR LAWSON: Mr. Holmes stated, or asked you, Mrs. Holmes, if you remembered a Sunday last February when Mr. (Page i of Reporter's Transcript) Proffitt was at your house, and if you, Mrs. Holmes said, "Do you mean the Sunday that Hill and Proffitt came while I was taking Hazel to Sunday school?" Then Mr. Holmes said, "That is the Sunday that I mean, but Hill was not with Proffitt." Then you, Mrs. Holmes, said, "Yes, he was. Don't you remember you told me that that was Hill? And I afterwards told you that Mrs. Merry said, after I described him to her, that he was the same man who came to borrow a gun while we were at Pasadena with the Kesters." Then Mr. Holmes said to you, Mrs. Holmes, "No, Hill was not there." Then you, Mrs. Holmes, said, "He certainly was." Then Mr. Holmes said, "Well, if he was, I didn't know it. I certainly did not see him." And then Mr. Holmes further said, "It will be a good thing for you to forget it if you saw him, for Hill is trying to prove that he was sick in bed at the time that they were supposed to have held up those Chinamen." And then Mr. Holmes further said, "It may be that you will be called on to be a witness. They had me down there today, and if you are called you just forget that you saw Hill."

(Testimony of Mrs. Nellie I. Holmes.)

Now, did that conversation take place between you and Mr. Holmes at that time and place?

A Yes sir.

Q. In the presence of you and Mr. Holmes?

A Yes sir.

(Page j of Reporter's Transcript) THE COURT:  
She stated the presence.

Q BY MR LAWSON: Now, Mrs. Holmes, on the same evening of May 29th, on Thursday night, at your home, in the City of Los Angeles, I will ask you if this conversation did not take place between you and Mr. Holmes, you two being the only parties present at that time. I might further say, did you have a conversation at that time in the house?

A Yes sir.

Q I will ask you if this is the conversation that took place at that time: You, Mrs. Holmes, stated to Mr. Holmes that "You were mixed up with this man Proffitt in opium deals." And further said, "Well, I have tried to get you to stay away from them and not mix into police affairs enough, and if you had been at home when you should have been, you would not have had it to say, that is, to testify." Then Mr. Holmes said, "I never was mixed up or had anything to do with them." Then you, Mrs. Holmes, said, "You certainly did. You seem to know all about that fellow you call Nigger Baptieste." And then Mr. Holmes said, "I did not." Then you, Mrs. Holmes, further said to him, "Well, I suppose you have forgotten that you told Mr. and Mrs. Schlotzhauer and Mr. and Mrs.

(Testimony of Mrs. Nellie I. Holmes.)

Kunkel and myself, that the Nigger's car that the Government was looking for was at your shop, and that they were looking for it all over, and (page k of Reporter's Transcript) that you knew that there was opium hid in it, and you hadn't looked for it yet, but was pretty sure there was a secret place in the car where the stuff wad hid." Then Mr. Holmes said, "You are driving me crazy; you always misinterpret things so." And then Mr. Holmes said this to you, "I told you that the car was in the shop and the Government had looked for it." Then Mr. Holmes said this to you: "The car was in the shop, yes, and the Government had looked for it, but I never mentioned opium." Then you said to Mr. Holmes, "You certainly did; and if they ask me to testify, I will ask Grace and Addie, and I bet they will remember it." And they you further said to Mr. Holmes, "What about Cockeye Smith? I guess you forget about telling me that you were going to San Diego with the sheriff to get him. And when you got back you told me that you had found him, and had come back by way of the Seal Beach, and that you had dinner there about three o'clock; and that you lied to me--you went to San Diego with a couple of women, and I suppose another man." Then Mr. Holmes said, "I didn't." Then you said, "You did." Then Mr. Holmes said, "Well, who told you? Addie?" Then you said, "No, he did not, and it is none of your business who did, but I know you did." And then Mr. Holmes further said, "Well, there were two women in the crowd, but they were not

(Testimony of Mrs. Nellie I. Holmes.)

with me; they were with the other fellows." Then you said to Mr. Holmes, "I suppose (page 1 of Reporter's Transcript) you played chauffeur." Then Mr. Holmes said, "Well, you are always picking fights with me. What have I done to bring this on?" Then you said to Mr. Holmes, "I am not fighting, but want you to understand that I won't lie for you or anybody else." Then Mr. Holmes said, "I don't want you to, nor nobody asked you to." Then you said to Mr. Holmes, "You certainly did just a few minutes ago. You asked me to forget that Mr. Hill was in the car with Mr. Proffitt. I want you to understand that I won't lie. If I am called on to be a witness I will tell the truth if I can remember and be sure, and if I don't remember, I will say so." Then Mr. Holmes said, "Well, is there anything good left of me?" And you said to Mr. Holmes, "Yes, there is. You are the best hearted fellow that ever lived." And Mr. Holmes said, "Is that all.?" Then you said, "When I said that, I mean the bottom of everything. If you would stay at home with your family and go out with decent people and treat my friends as you should, everything would go all right every way; but as long as you go with a crowd like you have been, and have nothing to do with your family, you can never expect to be happy, for nobody can make you happy, me or any other woman." Then Mr. Holmes said, "Don't worry, there will never be any other woman with me." Then Mr. Holmes said, "I only hope that I can fix things inside of thirty days so that my children will never have to



(Testimony of Mrs. Nellie I. Holmes.)

go without, and I will get out of the way. There is only (page m of Reporter's Transcript) one person that I know I can trust, and that is God." And then you said, "You had better not be so sure of it, the way you have been living." Then Mr. Holmes said, "Nellie, I had a nice surprise for you. Do you know what I am thinking of?" Then you said, "No." Then Mr. Holmes said, "Are you sure?" Then you said, "Why, yes." Then Mr. Holmes said, "Well, I don't know whether to tell you or not, but I believe I will." Then Mr. Holmes further said, "I was going to surprise you by putting you in your own home inside of three months from now. I have had a big business proposition offered me, and it is still hanging fire, but if it goes through the least that I will make the first year will be \$20,000, and I am still in debt to Charlie Gorton five thousand or seven thousand dollars. I am paying him when I can. And I was going to try to have you in your own home in about three months from now." Then Mr. Holmes further said that he had changed the combination on the safe at the shop, because he couldn't trust Eddie Menier, his foreman, because small amounts of money had been missed, and also a book of Stevens-Duryea parts and a list of Stevens-Duryea owners which he thought Eddie probably had taken, as he was considering going into business for himself.

NOW, did that conversation take place at that time?

A Yes sir.

MR. DOMINGUEZ: Just a moment. To which we object on the (page n of Reporter's Transcript)

(Testimony of Mrs. Nellie I. Holmes.)

ground that the same is incompetent, irrelevant and immaterial, calling for hearsay, not tending to prove or disprove any issues in this case, the question asked, and the statement made being purely on collateral matters, and not impeaching or tending to impeach the witness Holmes in any matter to which he testified in this case, bearing upon the issues in the case.

THE COURT: Now, if Mr. Holmes had this conversation with this witness, he was interesting himself in the trial of this case, and I think for that reason it is relevant, if that is your only objection.

MR. DOMINGUEZ: All the objections that I made, if your Honor please, are in the record. It is incompetent, irrelevant and immaterial and calls for hearsay.

THE COURT: The objection will be overruled.

MR. DOMINGUEZ: Yes sir. Exception.

THE COURT: What is your answer?

THE WITNESS: Yes sir.

MR. DOMINGUEZ: May I at this time, with your Honor's permission, object to your Honor's statement that the witness Holmes had an interest in this case?

THE COURT: No, I did not say that.

MR. DOMINGUEZ: Well, pardon me.

THE COURT: I said if he stated these things to this witness, it will show that he had interested himself.

MR. DOMINGUEZ: Pardon me, then, if your Honor please. (Page 0 of Reporter's Transcript).

(Testimony of Mrs. Nellie I. Holmes.)

THE COURT: That he had interested himself in this case.

MR. LAWSON: You may cross-examine.

CROSS-EXAMINATION.

I never spoke to either Mr. Proffitt or Mr. Hill except to say "Good morning" to them.

TESTIMONY OF P. H. BURGESS FOR THE DEFENSE:

P. H. BURGESS, called as a witness on behalf of the defendants, being first duly sworn, testified as follows (page 364 of the Reporter's Transcript):

I have been a police officer for ten years. Have lived in the City of Los Angeles for about twelve years. I have known Mr. Roy Holmes, a witness in this case, probably a year; also have known Mr. Proffitt for about three years. I saw Mr. Holmes and Mr. Proffitt about six-thirty on the 9th day of February, 1919, at Mr. Holmes' garage. I was in company with Detective Ingraham. Proffitt arrived there in his machine. I came in Ingraham's machine. I heard Proffitt speak to Holmes about fixing his, Proffitt's, machine. Most of the time I was sitting in the office. Proffitt, Ingraham and myself left about eight o'clock. We took Proffitt home in our car and let him off at 22d and Magnolia Street. While in the garage Holmes made a remark that he had a date with his wife to go to a picture show about eight o'clock. When we left, Proffitt's car was left at the garage.

(Testimony of P. H. Burgess.)

### CROSS EXAMINATION.

(Page 368 of Reporter's Transcript) I saw Proffitt on the 3d day of February, 1919, when I asked him to make an arrest for me. I can't say positively whether I saw him between the 3d and the 9th of February. I usually see him if he gets through before going off duty. I work out of the same detective's office that Proffitt does. At six o'clock Sunday, February 9, 1919, was the first time that I saw Ingraham on that day. We stayed probably an hour and a half at the Holmes garage. It was getting dark at the time we left. Ingraham, Proffitt and Holmes were talking about the machine when we got there. I didn't engage very much in the conversation. I had been to the Holmes garage twice before this time but not on Sunday. I talked with Proffitt a few days after his arrest about this case. It was after he got out of jail. He asked me if I remembered when I was over at the garage and what occurred there. I talked to him about the case several times. I remembered that this time was February 9th, because it was one of my days off and the fact of Mr. Ingraham's illness, and the fact that he and I were detailed together on the first of February would recall the date.

### TESTIMONY OF GEORGE K. HOME FOR THE DEFENSE:

GEORGE K. HOME, called as a witness on behalf of the defendants, being first duly sworn, testified as follows (page 381 of Reporter's Transcript):

(Testimony of George K. Home.)

I am Captain of Detectives, Los Angeles Police Department. I have known Howard Proffitt for three or four years. His reputation for truth, veracity, honesty and integrity has been good up to the time of his arrest, which was February 24, 1919.

TESTIMONY OF MRS. CLAUDIA R. PROFFITT  
FOR THE DEFENSE:

MRS. CLAUDIA R. PROFFITT, called as a witness on behalf of the defendants, being first duly sworn, testified as follows (page 385 of Reporter's Transcript):

I am the wife of Howard Proffitt. We have two children. In February, 1919, we were living at 2122 Magnolia Avenue. I remember the Sunday night prior to February 12, 1919. That was the 9th. My husband worked from eleven o'clock P. M. until eight A. M. I saw my *hysband* in the morning of February 9th at our house. It was about a quarter after nine in the morning. He came home. I was in bed, and he says, "I am going over to Mr. Roy Holmes." I had a conversation with Roy Holmes on February 8th about one o'clock P. M. My husband was in bed asleep. My husband had gone to bed at 11:30. He told me to try to get Mr. Holmes and tell him that my husband wanted to see him about putting his machine in for repairs and ask him whether it would be all right to come out to the house in the morning, which would be Sunday morning. It was after one o'clock on Saturday that I talked to Mr. Holmes. I talked to him

(Testimony of Mrs. Claudia R. Proffitt.)

over the telephone at his garage. Mr. Holmes said it would be all right. I told that to my husband when he wakened on Saturday night. On Sunday morning my husband left the house with his car between 9:15 and 9:30; he told me he was going over to Mr. Holmes'. My husband returned about 10:30; he told me he was going to take the machine down to the Holmes garage that night, which was February 9th, and then went to bed and awakened about 5:30; he left the house about six o'clock by himself. He was away until about twenty or twenty-five minutes after eight.

#### CROSS EXAMINATION.

(Page 397 of Reporter's Transcript) Mr. Proffitt arrived home on February 9th around the hour of nine-fifteen. He usually gets home about eight-thirty. He left there shortly after nine-fifteen, between nine-fifteen and nine-thirty for the Holmes garage, and he got back about ten-thirty. He got up and dressed about five-thirty. He didn't have dinner with me on that night, because he went to the garage. He got back about twenty minutes after eight.

I know the defendant Hill. I have been out to his home. I was there the first part of March. I was there just once; that was on Saturday, February 15th. His wife and baby and Mr. Proffitt and myself were there. I was over at the Hill home on the 13th of January, when Mrs. Hill was sick with the influenza. My husband was in the room at the time.

(Testimony of U. L. McIntosh.)

TESTIMONY OF U. L. McINTOSH FOR THE  
DEFENSE:

U. L. McINTOSH, called as a witness on behalf of the defendants, being first duly sworn, testified as follows (Page 410 of Reporter's Transcript):

I am a police officer. I have lived in Los Angeles for eighteen years. I know the defendant Hill. Hill was detailed in the detective department from eleven o'clock at night until eight o'clock in the morning. He was working under my specific direction on the first day of February, 1919. My work sheets show that on January 11, 1919, he was sick. The records show that between the 11th of January, 1919, and the 27th of January *and the 27th of January* Mr. Hill was sick in bed and at home.

CROSS EXAMINATION.

(Page 414 of Reporter's Transcript) The defendant Hill went to work on February 9, 1919, at 10:45 P. M.

TESTIMONY OF BEULAH PORTER HILL FOR  
THE DEFENSE:

BEULAH PORTER HILL, called as a witness on behalf of the defendants, being first duly sworn, testified as follows (page 416 of Reporter's Transcript):

I live at 1409 Oak Grove Avenue, Los Angeles. I am a teacher and I do nurse work. I know the defendant Hill. I have known him since last January.

(Testimony of Beulah Porter Hill.)

I also know his wife. I attended Mrs. Hill as a nurse on the 9th day of January when they were living on 60th Street. I attended Mr. Hill on the 9th of January when they were living on 60th Street. I attended Mr. Hill on the 9th day of January, the following day after I commenced to attend Mrs. Hill. Dr. Squires was the attending physician. Mr. Hill's physical condition was delirious. He had fever and was in bed. I remained there as nurse until the 14th day of January. He was in bed at that time. His wife was very sick during that time. On the 14th day of January he was not very ill. I was in constant attendance.

#### CROSS EXAMINATION.

(Page 420 of Reporter's Transcript) Mr. Hill told me that I had been subpoenaed to come here and if I was not, not to come. I received my subpoena yesterday. Mr. Hill was out of bed before I left nursing them. He was up the day I left.

#### TESTIMONY OF DR. C. G. STADFIELD FOR THE DEFENSE:

DR. C. G. STADFIELD, called as a witness on behalf of the defendants, being first duly sworn, testified as follows (page 423 of Reporter's Transcript):

I am a physician and surgeon at the Receiving Hospital in Los Angeles City. I know the defendant Hill. I attended him in January some time, the 13th or 14th. Saw him at his home. He was confined to his house but wasn't in bed. He was treated by me



(Testimony of Dr. C. G. Stadfield.)

approximately thirteen days. The last time I saw him was about on the 26th. He was sick enough for me to tell him to stay in the house and when I called at the house he was there.

TESTIMONY OF DR. JULIUS F. ROTH FOR  
THE DEFENSE:

DR. JULIUS F. ROTH, called as a witness on behalf of the defendants, being first duly sworn, testified as follows (Page 428 of Reporter's Transcript):

I am a physician and surgeon and have been so for twenty-eight years. I know the defendant William Hill - - have known him since November, 1918. I attended him professionally from November 18th to December 19th. Also attended him once in January. He had the flu.

CROSS EXAMINATION.

(Page 430 of Reporter's Transcript) I attended him at my office from November 20th to December 19, 1918.

TESTIMONY OF DR. HAMILTON FORLINE  
FOR THE DEFENSE:

DR. HAMILTON FORLINE, called as a witness on behalf of the defendants, being first duly sworn, testified as follows: (Page 432 of Reporter's Transcript):

I am a physician and surgeon. I know the defendant Hill, attended his wife in January, 1919, I think about

(Testimony of Dr. Hamilton Forline.)

the 12th or 13th. Mr. Hill was there at the time. He was in bed. I had occasion to visit the house frequently after that up to about the 22d or 23d of January. I had occasion to send a nurse, a Miss Hiller, there.

TESTIMONY OF EDWARD L. MENIER FOR  
THE DEFENSE:

EDWARD L. MENIER, called as a witness on behalf of the defendants, being first duly sworn, testified as follows (Page 436 of Reporter's Transcript):

I live at 621 West 30th Street. Have lived in this city twelve years. My business is automobile repairing. In the month of February, 1919, I was employed by Roy B. Holmes Company, at 1350 South Bonnie Brae. The work slips which you now show me are in my handwriting and are signed by me, being numbered 2434 and marked "Defendants' Exhibit A." The work referred to on the work slips was work done on the car of Howard Proffitt; it was a Haines car. The work in question was done on February 10, 1919. I think I recollect of it being Monday. It was work done on Proffitt's car on February 11th. It was the same car that we worked on on February 10th, as evidenced by Defendants' Exhibit B. It was also work done on Howard Proffitt's car by us. Work slip signed by me and marked "Defendants' Exhibit C." On the work slip Number 2434 that is signed A. W. Saline, also an employee of Roy Holmes; that is his

(Testimony of Edward L. Menier.)

handwriting. That slip shows that work was done on the Proffitt car on February 10th. It was work done on the Proffitt car on February 10th, as shown by this work slip and marked "Defendants' Exhibit E." There was another work slip which has no date except the month of February concerning work done on the Proffitt car, which work slip is Defendants' Exhibit F. There was work done later in the month of February, on the Proffitt car, as per this work slip which you now hand me, marked "Defendafts' Exhibit G."

#### CROSS EXAMINATION.

(Page 447 of Reporter's Transcript)

BY MR. LAWSON: Q Now, Mr. Menier, did you ever have any conversations with the defendant Proffitt when he brought his car to the shop to be repaired?

MR. DOMINGUEZ: Well, we object to that, unless it is limited to the times indicated by this witness's testimony, as not cross-examination; and on the further ground that this witness has not testified that Howard Proffitt ever took that car to that garage or that shop.

MR. LAWSON: Well, your Honor, I think it is material to show that all the transactions that this witness had with the defendant Proffitt, if he had any transactions -- this counsel here has gone into part of it, and it seems to me that the Government is entitled to go into all the conversations that they had, if they did have them.

(Testimony of Edward L. Menier.)

THE COURT: Regarding the time that they worked on this car?

MR. LAWSON: Yes, your Honor.

THE COURT: Why, sure.

MR. LAWSON: Referring to around the times that you worked on the car.

MR. DOMINGUEZ: Well, we except to that, unless it is limited to the actual times, not about the time, but the time itself.

THE COURT: Well, any conversation that he had concerning doing this work that he has testified about.

(Page 448 of Reporter's Transcript)

MR. LAWSON: Yes sir.

MR. DOMINGUEZ: We except.

THE WITNESS: Well, there was one morning Mr. Proffitt brought the car in and Mr. Holmes wasn't there - -

MR. DOMINGUEZ: Well, we object to that, unless it bears upon the time. This witness has testified that he did work there on Monday. There is no testimony on the part of this witness that Proffitt ever took that car to him Monday morning. The witness testified that he found the car out in a garage in Hollywood. Now, he can't testify to any other Monday morning.

THE WITNESS: That was the Monday morning afterwards, after the 10th.

Q BY MR LAWSON: It was the 18th of February?

(Testimony of Edward L. Menier.)

A Yes, it would be the 18th.

Q BY THE COURT: Have you testified concerning work on the 18th?

A Only that I went out to Hollywood to get that car.

THE COURT: All right.

MR. LAWSON: He already testified to that, your Honor, I think, and the time slip shows it.

THE COURT: Proceed.

MR. DOMINGUEZ: Exception.

A One morning Mr. Proffitt brought the car in, and Mr. Holmes wasn't there. He just brought the car in, and left it, and he says, "If Mr. Holmes wants to know if that car was here when (Page 449 of Reporter's Transcript) you opened up this morning, tell him 'yes'." So I went around the shop and told the different boys to tell Mr. Holmes in case he inquired. I am not sure whether that was in the morning - -

MR. DOMINGUEZ: May I ask one question, your Honor, to clear this matter up?

THE COURT: Yes.

Q BY MR. DOMINGUEZ: Was that conversation that you are now relating, on the Tuesday or Monday morning when you got that car out there at Hollywood?

A I hadn't got far enough to state that. I don't remember the morning this happened.

MR. DOMINGUEZ: Well, then I object to it on the ground that it is incompetent, irrelevant and immaterial; no proper foundation laid.

(Testimony of Edward L. Menier.)

MR. LAWSON: Your Honor, the fact that this witness cannot recall - -

THE COURT: Now then, I understand that the witness is going to testify about some conversation that he had concerning the time that some of these slips relate to, is that it?

THE WITNESS: No, it isn't exactly that. The time that he brought the car in, I don't remember the date of that, but I do remember what was done on the car on the different dates.

Q BY THE COURT: Well, haven't you already testified to what was done on the car?

(Page 450 of Reporter's Transcript)

A Yes sir.

THE COURT: The objection will be overruled.

MR. DOMINGUEZ: Exception.

THE COURT: Go ahead and state it, now.

Q BY MR LAWSON: Go ahead and state that conversation.

THE COURT: About Mr. Proffitt bringing the car in.

MR. LAWSON: Yes.

A Well, he brought the car in and he told me, if Mr. Holmes inquired about the car, to state that it was there all night. So I went around and told the different boys to that effect, but I don't remember the exact date of this morning, but I do remember on the morning of the 10th of doing a little light work on the car, such as I changed the oil in the crank case, I believe, and I adjusted the cups, and went over the

(Testimony of Edward L. Menier.)

carbureter, and I took the car and tested it, and if I remember right, Mr. Proffitt got the car that afternoon and brought it back the next morning. And the next morning I tore down the front end and took out the starter clutch, and previous to that time that starter clutch hadn't been taken out in our shop, and I don't remember Mr. Saline working on it.

(Page 451 of Reporter's Transcript) The work slip which you show me, dated February 10th--I did that work myself the 11th or 12th. It was after the first day the car was in, and it was taken out and it was brought back the following day. Then I tore out the starting clutch, but that man never worked on the starting clutch because I did it myself, and it never had been taken out in the shop previous to the time that I done the work. The work started in at half past seven in the morning and finished at ten o'clock. The pencil mark on that slip is written in Mr. Saline's writing. I did the work myself on the 11th or 12th. It was not done on the 10th at all, and that man never worked on the car with me. There was only one other man worked on the car with me, and that was Huntington, and he changed the tire.

(Page 454 of Reporter's Transcript) Q BY MR LAWSON: I submit some exhibits already introduced and ask you if those are not the slips indicating that work in regard to the starter clutch?

A Yes sir, this one here.

Q Which one is this?

A It is B.

(Testimony of Edward L. Menier.)

Q Defendants' Exhibit B. What does that exhibit show?

A That shows that I took off the radiator and took down the front end and took off and disassembled the starting clutch.

Q And what date was that?

A On February 11th. Started at three o'clock in the afternoon and finished at five thirty-five.

Q Now, what do those other exhibits show?

A Changed the right rear tire and - -

Q Which one is that now you are referring to?

A That one has nothing on it. That is Huntington's time. This one here.

MR. LAWSON: They are pinned together and all marked "A."

A Well, this one is not stamped.

Q It is the second one of that series?

A Yes. Changed the right rear tire and filled universal joint.

Q And the next one?

A Assembled starter clutch on the 13th of the month.

Q And who did that work?

A I did.

Q Now, was there any other on there?

A There is another one here, put in starting clutch and assembled front end, and so forth, on the 14th. The job was started on the 11th. It was disassembled and sent out to the grinders and was re-



(Testimony of Edward L. Menier.)

turned on the 13th and installed on the 14th -assembled and installed on the 14th of February.

Q Of this year?

A Yes. The assembling of the clutch started at five o'clock on the 13th and went on until five-thirty. On the morning of the 14th, started at seven-thirty and the job was finished at nine o'clock -this particular starter job.

Q Do you know whether or not the Baptieste car was in the shop at that time?

MR. DOMINGUEZ: That is objected to as not cross-examination, and as incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. DOMINGUEZ: Exception.

(Page 455 of Reporter's Transcript) The Baptieste car was in the shop on the 10th of February, 1919. It was in running condition.

REDIRECT EXAMINATION.

(Page 458 of Reporter's Transcript) I left the employ of Mr. Holmes about the 6th or 7th of April.

Q BY THE COURT: You say this is Mr. Saline's signature there?

A Yes sir.

Q You are familiar with it?

A Yes sir.

Q Well, is that his handwriting up there?

A Yes sir.

Q The same man wrote them both?

A Yes sir.

(Testimony of Edward L. Menier.)

Q And who wrote the number there, can you tell?

A Well, that looks like his writing.

Q All of it?

A Yes sir.

Q And that "2-1/2" in there, what is that?

A 2-1/2 hours. That is from seven-thirty to ten o'clock.

Q BY MR. DOMINGUEZ: You knew Mr. Howard Proffitt's Haines car, didn't you?

A Yes sir.

Q Is it not a fact that it was there on the morning of the 10th when you got there to work?

A I won't say that.

Q Will you say it was not there?

A No, I won't. I don't remember whether it was or not.

I know Mrs. Holmes. I saw her some time last March.

#### TESTIMONY OF HERBERT A. SQUIRE FOR THE DEFENSE:

HERBERT A. SQUIRE, called as a witness on behalf of the defendants, being first duly sworn, testified as follows (Page 473 of Reporter's Transcript):

I have been a physician for thirty-three years. I live at 2947 La Salle Avenue, Los Angeles, and have lived in Los Angeles fifteen years. I am acquainted with the defendant Hill. I had occasion to visit him the fore part of January. He had influenza. His wife

(Testimony of Herbert A. Squire.)

was sick at the time. He was a very sick man at that time.

TESTIMONY OF WESLEY AUSTIN FOR THE  
DEFENSE:

WESLEY AUSTIN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows (Page 484 of Reporter's Transcript):

I am a police officer for the City of Los Angeles; have lived in Los Angeles nine years, and have been an officer three years. I am acquainted with the defendant Proffitt. He has a drab olive uniform in my locker. There is only one key to the locker and I have the key. I never loaned the key to Mr. Proffitt. The uniform has been in my locker since March 1918. The uniform has brass buttons on it.

TESTIMONY OF HOWARD J. PROFFITT FOR  
THE DEFENSE.

HOWARD J. PROFFITT, called as a witness on behalf of the defendants, being first duly sworn, testified as follows (Page 489 of Reporter's Transcript):

I have lived in California for thirty years. Los Angeles has always been my home. I have been a police officer for the City of Los Angeles for over three years. I know Mr. Hill, the defendant. I first met Hill in November, 1918. We were detailed to work out of the same office. We were paired together. We were on what was known as the Flying Squadron. In the month of February, 1919, my hours of work were from

(Testimony of Howard J. Proffitt.)

eleven o'clock at night until eight o'clock the next morning.

I know Frank Edmondson. The first time I ever met Edmondson was in the latter part of November or the first of December, 1918. I remember meeting Edmondson at Sixteenth and Figueroa on February 17, 1919. Hill asked me to drive him down to Sixteenth and Figueora and I told him I would, and I drove him over to Sixteenth and Figueora. We were there possibly five minutes when Edmondson drove up and stopped his machine right behind ours, Edmondson and his partner Swan. At that time I didn't hear any conversation concerning opium. I never had any conversation with Hill or anyone else regarding the sale of opium or "Cockeye" Smith. I did not hear any of the conversation at that time. I never knew a person by the name of "Cockeye" Smith. I was shown a picture of a man supposed to be "Cockeye" Smith, but I never met such a man to my recollection. Neither did I ever go to dinner with such a man. I never had any opium in my possession in my whole life; neither did I ever ask any person to buy opium or sell opium for me or any person else. I never telephoned at any time to a man by the name of Hom Hong, a witness who appeared in this case. I never talked to Tom Hong in my life. The first time I ever saw him was on the night of February 24th, the time I was arrested.

I went to Edmondson's room one time. It was in the morning. At that time Hill was also present. Ed-

(Testimony of Howard J. Proffitt.)

mondson had sent for us on a matter concerning his being Chief of Police of Venice, and he wanted us to help him and in return he would let us work there as officers, doing special work. I think this was on a Monday morning. Edmondson had clippings and telegrams concerning his fitness for the job, which he showed us at the time. There was not a single word said about opium. I left there with Mr. Hill. The conversation lasted probably about fifteen minutes.

I remember taking Mr. Hill down to the Sherman Hotel one night. I did not go up to Mr. Edmondson's room. I stayed out in the machine. It was a police machine. Hill went upstairs and then came down with Swan, Edmondson's partner. After that Monday I never saw Edmondson until they took me out of the County Jail and Edmondson was going out. I believe it was on the 24th or 25th of February, this year. I never discussed with Edmondson anything concerning opium. I never told Edmondson or any person else that opium was worth \$120.00 a can in San Francisco.

On February 9, 1919, that was Sunday, I spent most of my time at home. I arrived home about 8:30. I did not remain there. I went to Mr. Holmes' house. I arrived home about 10:30. I left work with Hill that morning. I went down to the Holmes house. Mr. Holmes was in bed. I told Holmes that Monday was my day off and I told him that something was wrong with my machine. I asked him if he would come down and see if he could fix it for me. He told me to take it down to the garage about 5:30 or 6 o'clock, and that

(Testimony of Howard J. Proffitt.)

he would meet me there. I then went home. My wife was at home when I arrived. I had breakfast, after which I went to bed. I got up about 5:30 and then took my machine down to the Holmes garage. I should say I arrived there about six o'clock. Just about the time I arrived there Mr. Ingraham and Mr. Burgess drove up in their car. That must have been around about 6:30. I talked to Mr. Holmes about the repairs upon my car and then I left there a little bit before eight o'clock. That was on Sunday, February 9th. I left my car there to be fixed. I went home in the Ingraham machine. Mr. Ingraham drove the car. I got off the car at 22d and Magnolia; that is the nearest corner to my house, and I went home. After I got home I lay on the lounge and went to sleep, and I left the house about ten o'clock and went to work. I reported for duty.

I did not go to Pasadena on the night of February 9, 1919, nor had I any opium of any kind in my possession on that night or any other night, nor did I witness any person put opium in any valise on that night or any other night. I did not take a ride to Pasadena on February 7, 1919.

I never visited at the Crystal Apartments in my life; neither was I ever at a cafe called the Maison Pierre in my life, nor do I know where it is.

My car is a Haines car. I took my car out of the Holmes garage about a week after. I think it was about the 17th of February.

(Testimony of Howard J. Proffitt.)

I never wore a mustache in my life; never attempted to disguise myself. I never went into Hom Hong's place in Pasadena in the uniform of a police officer, wearing brass buttons and a cap. I never saw Hill wearing a little short mustache, or any kind. I have a blue uniform with two buttons on it. I haven't seen it for a year. I am detailed out of the detective's office and never wore a blue uniform from out of there.

I never was treated or did I ever see Hom Hong, or any other Chinaman, in Pasadena, or did they ever give me a glass of water or a cigar. Was never in their place of business at Pasadena.

I never saw any opium in the possession of Mr. Hill.

I heard about Mr. Edmondson's arrest about two o'clock in the morning. Hill and I had heard that Edmondson had been arrested. Hill asked me if I would drive him out to Officer James' house; that he had seen Edmondson and Edmondson wanted him to get in touch with James and his partner, Swan, and also his attorney, Claude Morton. I told Hill I would drive him out. On our way out we stopped at the Washington Building where Edmondson has his office. We were looking for Swan. I did not talk with Edmondson at all after his arrest.

I was never detailed to work in Chinatown. The night of my arrest they took me to the detective's office and asked me if I was acquainted with Hom Hong. He was there at the time. I told them I had never seen

(Testimony of Howard J. Proffitt.)

him before. I was informed as to the charges against me. They told me that I was supposed to have been selling opium in Pasadena. I told them that I had not. This is the first time I have ever been accused of any charge, the first time I have ever been called before my superior officers and called to explain any conduct on my part.

The latter part of February I attended a banquet in Chinatown with Lieutenant McIntosh, my superior officer. There were two banquets. The banquets were given by the Hop Sing tong, a Chinese society; that was on the 2d day of February. There were between one hundred and one hundred fifty guests. There are different tongs in Chinatown.

#### CROSS EXAMINATION.

(Page 524 of Reporter's Transcript)

I was very busy on the night of Edmondson's arrest. I don't remember just what I was doing that night. If I could see the work sheet I could tell just exactly what calls I went on. My name would be there. I went to work that night at eleven o'clock, Edmondson had been booked at the City Jail. Every person around there had been talking about his arrest. I knew that he was in jail at the time. Hill and I were paired together that night but we didn't report together. His hours were the same as mine. The first time Hill and I talked Edmondson's arrest over was between three and four o'clock in the morning. Hill went up to see him anyway. Hill and I went out at Edmondson's request to see some friends for him.



(Testimony of Howard J. Proffitt.)

Hill told me that just after talking to Edmondson. We then went to Mr. Swan's home. We found him out. Before starting for Swan's home Hill said Swan was either up at his office or at his home. Our idea in seeing Swan and Lefty James at Edmondson's request was to see if anything could be done to help Edmondson, to get an attorney for him, and so forth. We went to the Washington Building and saw the watchman there. As I remember, we rang the elevator bell. The watchman came down. I didn't know what floor Edmondson's office was on, or anything about it. Don't know yet. Never did know. We asked the watchman about the number of Edmondson's office; talked to him just a minute; conversation was between all of us. I had no keys to Edmondson's office. I didn't ask the watchman to let us in the office but wanted to go up to find out whether Swan was there. We then went out to Lefty James' house. That was around about three or three-thirty. We were on duty at the time. I was driving a city machine. I was not ordered by my superior officer to drive out to James's residence or go around helping Edmondson, but I went on the *errands* just the same. I went down to the Sherman Hotel in the morning. I believe it was on Monday. At that time Edmondson made the remark that the Trustees of Venice met on Monday, and that was the time he showed us the telegrams and newspaper clippings about the job that Edmondson was going to get as Chief of Police. That was in February.

(Testimony of Howard J. Proffitt.)

I have talked to Edmondson six times in my whole life, but I have seen him thousands of times, but I didn't know who he was until some time in November or December, 1918. I had no particular association with him whatever; nothing in common. I came up to his hotel at eight o'clock in the morning. I had just got off work; went on the street car, to the best of my recollection; might have walked; I don't remember; from Edmondson's place went to my home. This was the only time I was ever in the Sherman Hotel to talk to Edmondson. Hill and I went together. Hill and I had both talked over this job at Venice and we went there for the purpose of seeing Edmondson's recommendations, and so forth. I had talked to Edmondson once about this job in the Police Station when he was up there.

TESTIMONY OF A. W. SALINE FOR THE  
DEFENSE.

A. W. SALINE, called as a witness on behalf of the defendants, being first duly sworn, testified as follows: (Page 519 of Reporter's Transcript):

I live at 1316 West 58th Street, Los Angeles. Lived in Los Angeles two and one-half years. I am an automobile mechanic by profession and in the month of February, 1919, I worked for Roy B. Holmes at 1350 South Bonnie Brae Street, Los Angeles.

Defendants' Exhibit E is in my handwriting. That is a time slip we make out on each job. That was made out in the Holmes shop. I made it out on Feb-

(Testimony of A. W. Saline.)

ruary 10, 1919, about 7:35. We have a time clock and we stamp all our work by the time clock. That shows the time I commenced to work on the car. I finished that particular job at five minutes to ten. That job is marked No. 2435. The work was done on the Howard Proffitt car. I came to work at 7:30 in the morning on February 10, 1919. When I came the Howard Proffitt car was there. I started to work on the car at 7:35.

#### CROSS EXAMINATION.

(Page 521a of Reporter's Transcript)

Independent of the Defendants' Exhibit E in this case, I remember doing some work on the spot light and on the starter clutch. I did that work on Monday morning. When you show me the slip I can remember it a little bit. Independently of the slip I remember working on the car that particular time. I recognize this particular car was a new car. It is not the first time the car had been in the shop, but it is a new car. I know when I went to work on it. I recall seeing the car standing there. It was standing just to the left of the door when you come in. I know right where the car was standing. I have a picture of it in my mind. When I got there that morning the shop was open. I don't know how long the shop had been open when I got there. Edward Menier, the foreman, was there when I got there. Menier assigned the work to me when I got there that morning. He was my foreman. I worked on that car pretty close to three

(Testimony of A. W. Saline.)

hours. I don't think I finished the job. One of the other boys finished it. I couldn't tell you whether the car went out of the shop that afternoon or not. I don't think it did because I don't think the clutch could have been ready in that time to take the car out.

TESTIMONY OF WILLIAM E. HILL FOR THE  
DEFENSE.

WILLIAM E. HILL, called as a witness on behalf of the defense, being first duly sworn, testified as follows (Page 540 of Reporter's Transcript):

I am a defendant in this case, and married to Nancy Ammons Hill, a witness for the Government; married in 1916; am not living with her now; have one child nineteen months old; was appointed to the Los Angeles Police Department on the Metropolitan Squad on August 21, 1914. I was detailed down in Chinatown July 1, 1917; worked under Sergeant Jarvis. The duties of a member of the Metropolitan Squad are to raid gambling joints, houses of prostitution and the illegal sale of liquor, mostly. My duties in Chinatown were to patrol. At that time there was a tong war on, and the duty was mostly to patrol and catch violators of opium and lottery.

(Page 543 of Reporter's Transcript) Q By the way, what is the name of that Chinaman that you took up to San Quentin? This is a preliminary question; I will continue it later on. Do you remember a Chinaman that you took up to San Quentin?

A No sir; I never was to San Quentin.

(Testimony of William E. Hill.)

Q Well, I will give you the name of the Chinese. Did you know one Richard Woo?

A Yes sir.

(Page 544 of Reporter's Transcript) I know Hom Hong, a witness in this case. I left the detail of Chinatown work in February of 1918. Went back to walking the beat on the Central Station.

I first got acquainted with Frank Edmondson, the first week I was in Chinatown. That was some time in September, 1918. I remember meeting Edmondson at Sixteenth and Figueroa. The way that meeting took place was that he came to the station one night in November or December with a black eye. He said someone had stolen his cap. He was wearing a uniform at Soloman's Dance Hall, as special police officer. And when he came in there he went over to the hospital and had been doctored up, and came over to the Detective Bureau, and our conversation *stated*, and he told me that later on he expected to get to be Chief of Police at Venice. I believe it was about the time that Harry Raymond was having his trouble. And he said at that time if he ever did land it, he would have a job for some of the boys in the Detective Bureau. Well, I don't remember seeing him any more until, oh, I expect it was along in January or February, quite a long time after that. And there was-- No, I guess it was-- no, it was in December, about Christmas time. The Japanese doctors--they had given them some kind of a state examination here, and they seemed that they were practicing here illegally, and

(Testimony of William E. Hill.)

some of them had committed suicide, and some had killed each other, and I got a call at First and Wilmington upstairs to a Japanese; that he thought someone was trying to kill him. And when I got down there they all seemed very much scared and said that they wanted me to stay there and watch them; and I told them that that was outside of police duty, that I could put in an emergency call and stay there a few minutes and see what the trouble was. And he wanted me to get into an automobile with him and go out in the country to see someone, and I told him that was outside of police duties, and he asked me where I could get a good man. And I told him, yes, because at the time that Frank Edmondson had been up there with that black eye, he had given me some of his cards, and he said, "Anything you can throw my way, I will make it right with you." So I gave the Japanese one of these cards and he called--well, I don't know how he got Frank Edmondson on that. I suppose he called him up about five or six days later than that. Why Frank told me that he had worked a few days for this Japanese, and I think he said he got eight or ten dollars a day from him--big money, anyhow, and he said they didn't want to pay that much any more, so he quit, and he told me that he would pay me my part of the money for getting this job--my commission--as soon as he got it. Well, later on, about the last of January or along about the 1st of February, a lady by the name of Miss Burke that lives at 1122 Georgia Street, and a lady by the name of Miss Rosie Cohn, I

(Testimony of William E. Hill.)

am not sure, came to the office and stated that Miss Cohn's husband, Harry Raymond, was living out in a hotel on West Seventh Street with another woman, and that she wanted us to go out there and make the arrest. It was her husband, and he hadn't supported her. He had just married her one day and left the next; never had supported her. And Miss Burke stated that she knew he was there, because he had some special make of machine and she knew the number of his machine, and she saw this lady drive up to this hotel and get out, and she went into the hotel and saw where they had registered, and she told Miss Cohn and they came to the station. I told her that it was outside of our work--for her to go and get a warrant for him; and she said, no, she wanted him arrested that night. So I called up the Sherman Hotel and left word--it was probably eleven--no, it was-- Yes, pretty near eleven o'clock. Miss Cohn worked at the telephone office, and she got off at ten and then came up there. I left word at the Sherman Hotel for Edmondson to call me up at the police department detective bureau when he came in, and about twelve-thirty, I think it was, he got out of there at twelve, he called me up and asked what I wanted, and I told him that I had some ladies up there that wanted to have a private detective, and he said he would come on up. He came up, and they went into the room there and talked, and Edmondson wanted it to go on until the next day. He said he didn't want to go out there either, and they told him that they didn't have any

(Testimony of William E. Hill.)

money, and so he said, "Well, Hill, if these are friends of yours, why, I will go and see what I can do for them, anyhow." I said, "They are not friends of mine. I have only seen them about an hour or such matter in the morning, so you can do as you like about it. And I think he told me that he went out the next day and found the name on the register all right, and he wanted to go out and arrest them the next night and asked me if I would assist him and Swan. And I told Mr. Proffitt about it, and Mr. Proffitt said, well, he didn't know whether he would want to monkey with anything like that, or not, and I had better ask Mr. McIntosh. So Edmondson came to the station and he stood right back of me when I asked Lieutenant McIntosh- -that is the man he was working under, and he said, no, not to monkey with that. "You are a police officer, and you want to leave that kind of stuff alone." I said it was for Edmondson, and he said, "The less you have to do with that man, the better off you are."

Mr. Edmondson, the day after we met him at Sixteenth and Figueroa Street, asked us if we would come to see him the next night. Mr. Proffitt and I went down to the Sherman Hotel. Mr. Proffitt took me down to the Sherman Hotel and I went up to see what he wanted, and Mr. Swan was there at the time. Swan is Edmondson's partner. That was the time he told me about the appointment of Chief of Police that he expected to get at Venice. Mr. Swan was there during our entire conversation. Mr. Proffitt did not



(Testimony of William E. Hill.)

come upstairs to Edmondson's room at the Sherman Hotel. He waited downstairs on the outside in the machine. When I went to meet Edmondson at Sixteenth and Figueroa Street Mr. Proffitt drove me up to that place. We were off duty at the time. We were coupled and working together. I got out of the machine when we got to Sixteenth and Figueroa. Proffitt stayed in the machine. It was about two o'clock on the morning of the 22d that I heard that Edmondson had been arrested, and I asked Proffitt if he had been up to see him, and he said, "No," so I told Proffitt I would go up and see him and do anything I could for him. No person went up to see Edmondson with me. Edmondson asked me to see Lefty James, another officer, and also to see his partner Swan. I first called up and got no response and then Edmondson gave me the telephone number of his office and told me Swan may be there in the Washington Building, so I asked Mr. Proffitt if he would drive me down to James' place, and also to the Washington Building; so then Proffitt and myself went down to the Washington Building and talked to the night watchman. The night watchman informed us that no person was in Edmondson's office, so we went away. We went to Lefty James' place on 48th Street and we told him that Mr. Edmondson asked us if we could come and see him and have him get hold of Claude Morton, the attorney.

Proffitt never went with me to the Crystal Apartments. He never had dinner with me, accompanied by two women taken from the Crystal Apartments.

(Testimony of William E. Hill.)

I never telephoned Hom Hong that Mr. Proffitt would accompany "Cockeye" Smith over to Pasadena. I never discussed with Mr. Proffitt at any time or at any place the question of opium. (Page 568) On February 9, 1919, we got through work, Mr. Proffitt and I, about eight o'clock, and he said to me, "If you will ride out"- - I could go by- -take a Grand Avenue car, and take a Vermont and Georgia, and ride around on Vernon Avenue and right around to my place, after I moved to Grand Avenue and 43d, and he said, "If you will ride out by my place I will get the machine, because I have got to go down right by your place to see Roy Holmes to get my machine fixed," so we went down to Third Street and caught the Vermont and Georgia car. To the best of my recollection there were lots of mornings when my wife was sick that I would eat hot cakes before going home, because there was no one to keep house for me. She was with her mother, and convalescent; and I believe, to the best of my recollection, we went near Third and Broadway, right around the corner between Spring and Broadway and ate some waffles, but I (Page 569 of Reporter's Transcript) couldn't swear to that because I am not sure whether we did this morning or not; but anyhow we rode out to his place on the car, and he got his automobile out and we went down to find Roy Holmes. He had one number- -he had the number of the place, and I was intending later on to go up in Antelope Valley with my folks and go rabbit hunting, and I had been told- -and the fact of the

(Testimony of William E. Hill.)

matter was he had been stationed there many times, with shotguns, and I didn't have any shotgun, and I wanted to know what his address was so that I could borrow it from him later on, so I went down with Mr. Proffitt to the place, and we had gotten the wrong number; so we drove past the place down as far as Budlong, and went into a place and asked where Holmes lived, and they told us it was about four houses up from the corner, where a big flag was out; so Mr. Proffitt just walked right up from this house and he asked for information and told me to drive on, and the machine was hard to start, I didn't understand it very well, so he just walked up there and talked to Mr. Holmes and went in the house and I waited about five minutes and he came out, and he took me as far as Vernon and Vermont and I caught the Vernon Avenue car. He was going to take me over home, but there was a car right there in sight and I told him I would just grab it. We didn't have to pay any carfare; we rode on our badge.

With reference to using Mrs. Fisher's phone, I did not call up any Chinese from her house. I received a call there from a Chinaman; there were two of them, Tom Wah, 915 Central Avenue, and another whose name I cannot at this moment recall, at 115 1/2 Commercial Street. They told me to come down and get a turkey--to come to their place and get a turkey; this was shortly before Christmas, probably between the 15th and 25th of December, 1918. Ching Wing is the man that lives at Commercial Street. Every man that

(Testimony of William E. Hill.)

ever worked in Chinatown always received a turkey for Christmas.

I did not meet Mr. Proffitt at Pasadena on Sunday, February 9, 1919. I was never present in Pasadena when Wong Wing gave a glass of water or a cigar to Mr. Proffitt.

#### CROSS-EXAMINATION.

(Page 586 of Reporter's Transcript, at page 588-9)

Q BY MR LAWSON: How long have you known Tom Wah?

A Since I first went on the police department in 1914.

Q 1914? A Yes sir.

Q How many times have you ever raided his place? A Yes sir.

MR. DOMINGUEZ: That is objected to-- Just a minute, Mr. Hill.

THE WITNESS: Excuse me.

MR. DOMINGUEZ: That is objected to on the ground it is not cross-examination, incompetent, irrelevant and immaterial.

THE COURT: I thought he gave testimony on that, or I have gotten the Chinamen mixed.

MR. DOMINGUEZ: Yes. He is asking about Tom Wah, as I understand it.

MR. LAWSON: Yes, I expect it is.

MR. DOMINGUEZ: I ascribe the conduct of the District Attorney as misconduct.

MR. LAWSON: Your Honor, I merely have tried to get in all the facts with reference to this date

(Testimony of William E. Hill.)

in regard to any Chinamen that he was examined about.

THE COURT: The fact that he raided another Chinaman might have some bearing upon it. I will overrule the objection.

MR. DOMINGUEZ: Exception.

That thereafter, to wit, at about the hour of 3:47 o'clock P. M. on the 5th day of June, 1919, the jury returned duly and regularly into court their verdict finding the said defendant, Howard Proffitt, guilty as charged in the first, second, third and fourth counts of the indictment.

That the time for sentencing said defendant was thereupon duly continued by the Court until the 17th day of June, 1919, upon which date the said defendant filed in said court his motion for a new trial. That thereupon on said date the Court duly and regularly heard the motion of said defendant for a new trial and duly and regularly made its order denying said motion, to which ruling the exception of the defendant was duly made and entered, and thereupon, on the same day, said defendant filed his motion in said Court in arrest of judgment and the Court thereupon heard the same and duly and regularly made its order denying the said motion in arrest of judgment, to which ruling the exception of the said defendant was duly made and entered, and thereupon the Court duly and regularly pronounced sentence upon the defendant, Howard Proffitt, adjudging that he be imprisoned

(Testimony of William E. Hill.)

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That the time for sentencing said defendant was thereupon duly continued by the Court until the 17th day of June, 1919, upon which date the said defendant filed in said court his motion for a new trial. That thereupon on said date the Court duly and regularly heard the motion of said defendant for a new trial and duly and regularly made its order denying said motion, to which ruling the exception of the defendant was duly made and entered, and thereupon, on the same day, said defendant filed his motion in said Court in arrest of judgment and the Court thereupon heard the same and duly and regularly made its order denying the said motion in arrest of judgment, to which ruling the exception of the said defendant was duly made and entered, and thereupon the Court duly and regularly pronounced sentence upon the defendant, Howard Proffitt, adjudging that he be imprisoned

in the Federal Penitentiary, at McNeil Island for the period of two years on the first count, two years' imprisonment on the second count, with a fine of Fifty Dollars (\$50.00), two years' imprisonment on the third count, with a fine of Fifty Dollars (\$50.00), and two years' imprisonment on the fourth count, with a fine of Fifty Dollars (\$50.00), said terms of imprisonment to run concurrently.

Thereupon, on the said 17th day of June, 1919, the said defendant duly and regularly filed in said court his petition for a writ of error, and concurrently therewith his assignment of errors. That the Court at said time allowed said writ of error and fixed a super-seedeas bond upon appeal in the sum of Five Thousand Dollars (\$5,000.00), to be duly given by the said defendant. That thereafter, to wit, on said 17th day of June, 1919, said defendant gave and filed in said Court his said bond in the said sum of Five Thousand Dollars (\$5,000.00), which was duly approved and allowed by said Court.

That thereupon, on said 17th day of June, 1919, a writ of error duly issued in said cause, returnable before the United States Circuit Court of Appeals for the Ninth Circuit. That thereupon, upon said date, citation on said writ of error was duly issued, served upon the United States District Attorney, and filed with the clerk of said court.

The indictment, demurrer, order overruling the demurrer, petition for writ of error, assignment of errors and the various orders and proceedings of the Court referred to herein, are fully set out in the



printed record on appeal of the clerk to be filed herein and ordered to be printed herewith.

PRESENTATION OF BILL OF EXCEPTIONS,  
NOTICE THEREOF, AND STIPULATION  
FOR SETTLEMENT AND ALLOWANCE.

The defendant, Howard J. Proffitt, hereby presents the foregoing as his bill of exceptions herein and respectfully asks that the same may be allowed.

Frank E. Dominguez

Milton M. Cohen

Will H. Willis

Attorneys for Defendant,

Howard J. Proffitt.

To Robert J. O'Connor, Esq., United States District Attorney for the Southern District of California:

You will please take notice that the foregoing constitutes and is the proposed Bill of Exceptions of the defendant, Howard J. Proffitt, in the above entitled action, and that said defendant will ask the allowance of the same.

Frank E. Dominguez

Milton M. Cohen

Will H. Willis

Attorneys for Defendant,

Howard J. Proffitt.

Service of the foregoing Bill of Exceptions is hereby accepted and acknowledged this 28th day of October, 1919.

Gordon Lawson  
Asst. United States Attorney,  
Attorney for the United States of America.

STIPULATION AS TO CORRECTNESS OF BILL  
OF EXCEPTIONS.

It is hereby stipulated that the foregoing Bill of Exceptions is correct; and that the same be settled and allowed by the Court.

Frank E. Dominguez  
Milton M. Cohen  
Will H. Willis  
Attorneys for Deft., Howard J. Proffitt.  
W. F. Palmer,  
Asst. United States Attorney,  
Attorney for the United States of America.

ORDER ALLOWING BILL OF EXCEPTIONS  
AND MAKING SAME PART OF  
THE RECORD.

The foregoing Bill of Exceptions, having been duly presented to the Court, is hereby duly allowed and signed and made a part of the Records in this cause.

Dated this 1 day of Nov, 1919.

Oscar A. Trippet  
Judge.

[Endorsed]: ORIGINAL No. 1721 Crim. IN  
THE DISTRICT COURT OF THE UNITED

STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. THE UNITED STATES OF AMERICA, Plaintiff, vs. HOWARD J. PROFFITT, et al., Defendants. BILL OF EXCEPTIONS. FILED Nov 1 1919 at 35min.past 10 o'clock A.M. CHAS. N. WILLIAMS, Clerk Louis J. Somers Deputy FRANK DOMINGUEZ & M. M. COHEN Attorneys at law, 703 California Building, Los Angeles, California, Bdwy 6237 Attorneys for Defendant Proffitt.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES OF AMERICA,	)	No. 1721 Criminal.
	)	
Plaintiff,	)	
	)	<u>PETITION FOR WRIT</u>
-vs-	)	<u>OF ERROR.</u>
	)	
HOWARD J. PROFFITT, et al,	)	
Defendants.	)	

Your petitioner, Howard J. Proffitt, one of the defendants in the above-entitled cause, for himself alone and for no other defendant, brings this, his petition for a writ of error to the District Court of the United States, in and for the Southern District of California, and in that behalf your petitioner says:

That on the 16th day of June, 1919, there was made, given and rendered in the above-entitled court and cause a judgment against your petitioner whereby your peti-

tioner was adjudged and sentenced to a fine of One hundred & fifty Dollars and imprisonment in the penitentiary at McNeil Island for a period of four years, and your petitioner says that he is advised by his counsel and avers that there was and is manifest error in the records and proceedings had in said cause, and in the making, giving and entry of such judgment and sentence, to the great injury and damage of your petitioner, and each and all of which errors will be more fully made to appear by an examination of said records, and by an examination of the Bill of Exceptions to be hereafter by your petitioner tendered and filed, and the assignment of errors which is filed with this petition, and to that end that the judgment, sentence and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, and our petitioner prays that writ of error may be issued directed therefrom to the said District Court of the United States, for the Southern District of California, Southern Division, returnable according to law and the practice of the Court, and that there may be directed to be returned pursuant thereto a true copy of the record, Bill of Exceptions, Assignment of Errors, and all proceedings had and to be had in said cause, and that the same may be removed unto the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the error, if any has happened, may be duly corrected and full and speedy justice done your petitioner.

And your petitioner makes the assignment of errors filed herewith, upon which he will rely, and will be

made to appear by a return of the said record, in obedience to said Writ.

WHEREFORE, your petitioner prays the issuance of a writ as herein prayed, and that the assignment of errors filed herewith may be considered as his assignment upon the Writ, and that the judgment rendered in this cause may be reversed and held for naught, and that said cause be remanded for further proceedings, and that he be awarded a supersedeas upon said judgment, and all necessary process, including bail.

Frank E. Dominguez,  
Milton M. Cohen  
Attorneys for defendant, Howard J.  
Proffitt.

The writ is allowed and supersedeas bond is fixed at the sum of \$3000.

Oscar A Trippet  
Judge

[Endorsed] ORIGINAL No. 1721 CRIM. In the United States District Court Southern District of California Southern Division UNITED STATES OF AMERICA, *Plaintiff vs.* HOWARD J. PROFFITT, et al, *Defendants* PETITION FOR WRIT OF ERROR FILED JUN 17 1919 *Chas. N. Williams, Clerk* Ernest J. Morgan *Deputy* FRANK E. DOMINGUEZ MILTON M. COHEN Attorneys for Defendant, HOWARD J. PROFFITT.



(c) That said indictment does not substantially conform to or comply with the requirements of Section 951 of said Penal Code.

(d) That said indictment does not substantially conform to or comply with the requirements of Section 952 of said Penal Code.

(e) That more than one offense is charged in said indictment except as provided in Section 954 of the Penal Code of the State of California, the state of which this court is holden.

(f) That said indictment is not direct or certain as regards the particular circumstances of the offense attempted to be charged, and that said circumstances are necessary to be alleged in order to constitute a complete offense.

That said indictment is not direct or certain sufficiently to inform the defendants herein of the particular circumstance of the offense with which they are attempted to be charged.

That said uncertainty consists in the following matters:

That it cannot be ascertained from the second count of said indictment how these demurring defendants did on or about the 8th day of February, 1919, or at any other time, in the Southern Division of the Southern District of California, or at any other place, receive or conceal or did facilitate in the transportation or concealment of opium.

That it cannot be ascertained from a reading of the allegations in the third count of the indictment how these demurring defendants did, on or about the 21st

day of February, 1919, or at any other time, in the Southern Division of the Southern District of California, receive or conceal or did facilitate in the transportation or concealment of opium.

That it cannot be ascertained from a reading of the allegations in the fourth count of the indictment how these demurring defendants did on or about the 21st day of February, 1919, at the City of Los Angeles, County of Los Angeles, State of California, receive or conceal or facilitate in the transportation or concealment of opium.

(g) That second count in the said indictment does not conform to Section 37 of the Penal Code of the United States in that there is no statement or attempt at statement of any overt act in so far as these demurring defendants are concerned.

(h) That third count in the said indictment does not conform to Section 37 of the Penal Code of the United States in that there is no statement or attempt at statement of any overt act in so far as these demurring defendants are concerned.

(i) That fourth count in the said indictment does not conform to Section 37 of the Penal Code of the United States in that there is no statement or attempt at statement of any overt act in so far as these demurring defendants are concerned.

(j) That the grand jury by which the indictment was found had no legal authority to inquire into the offense charged.

(k) That second count in said indictment is bad, defective, and *duplitious*; that said second count is



defective for the reason that there is a misjoinder of offenses; that more than one offense is charged in said second count of said indictment.

(l) That third count in said indictment is bad, defective, and *duplitious*; that said third count is defective for the reason that there is a misjoinder of offenses; that more than one offense is charged in said third count of said indictment.

(m) That fourth count in said indictment is bad, defective, and *duplitious*; that said fourth count is defective for the reason that there is a misjoinder of offenses; that more than one offense is charged in said fourth count of said indictment.

## II.

The court erred in overruling the objection of the defendant to the questions propounded to the witness Roy B. Holmes, which questions, objections, answers and exceptions are as follows: -

“Q Is that the Baptieste car?”

“A It was, sir.

“Q Now, who is Baptieste?”

MR. DOMINGUEZ: That is objected to as not cross-examination, as incompetent and immaterial.

MR. LAWSON: I think it will be very material before we get through, your Honor.

“THE COURT: I think it is material. I will overrule the objection.

“A Well, I can't interpret what you mean by “who”.

“Q He was a negro, was he not?”

“A He was a negro that lived somewhere around Central Avenue and 10th or 11th Street.

“Q BY MR LAWSON: Now, don't you know that Baptieste was picked up by Proffitt and Hill when he had opium in his possession; that he was taken down to the police station, and that his car was taken away from him and put in your garage?

“MR DOMINGUEZ: That is objected to as incompetent, irrelevant and immaterial and not proper cross-examination, and I ascribe the question as gross misconduct on the part of the District Attorney, the question having but one purpose, and that is to prejudice this jury against the defendant Proffitt on a collateral matter.

.....  
 “Q From whom did you get the car?

“A Mr Baptieste or someone called up my office and said their car was in front of a place on Central Avenue and wouldn't run, and I says, ‘We will be over there as soon as we can.’

“Q Was Baptieste under arrest at the time?

“MR. DOMINGUEZ: That is objected to as incompetent, irrelevant and immaterial and not cross-examination; and I again ascribe the question of the District Attorney as gross misconduct. This question is asked solely for the purpose of influencing this jury against this defendant Proffitt.”

### III.

The court erred in overruling the objection of the defendant to the questions propounded to the witness Nellie I. Holmes, in reference to a conversation which the witness had with another witness outside the pres-

ence of any defendant, which questions, objections, answers and exceptions are as follows:

Question propounded to witness Nellie I. Holmes with reference to conversation and actions of her husband, Roy B. Holmes:

“Q What did he do when he came home?”

“A Well, he seemed to be terribly excited and - -

“MR. DOMINGUEZ: Just a moment: Now, I move to strike that out on the ground it is not responsive.

“THE COURT: I think it is responsive. Go ahead.

“MR. DOMINGUEZ: Exception. It is hearsay - - calling for hearsay.

“Q BY MR. LAWSON: Just proceed, Mrs. Holmes.

“A He came in and he pulled down all the front curtains- -something that never happens only once in six or eight years.

“MR DOMINGUEZ: Just a moment. I move to strike that out on the ground the same is incompetent, irrelevant and immaterial, without the issues of this case and not binding on either defendant, what Holmes told her.

“THE COURT: If I remember right, Mr. Dominguez, Mr. Holmes was asked these questions. “Weren’t you excited when you got home?” And, “Didn’t you go in and pull the curtains down?” and he denied it. Now, if that is so, this evidence is admissible.

. . . . .

“THE COURT. The objection will be overruled. Proceed.

“Q BY MR. LAWSON: Just go on now, if there is anything else.

“A What I mean by ‘six or eight years,’ I don’t think they have ever been pulled down but twice since we are married, and that was twice since this supposed hold-up has happened.

“MR DOMINGUEZ: I move to strike out the last statement of this witness on the ground that the same is incompetent, irrelevant and immaterial, hearsay, her conclusion and opinion, and ask the court to instruct the jury to disregard that statement.

“THE COURT: Read the answer.

“THE COURT: I will overrule the motion to strike out.

“MR. DOMINGUEZ: Exception.

. . . . .  
“Q Now, I will ask you, Mrs. Holmes, if this conversation did not take place, if not the exact words, in substance?

“MR DOMINGUEZ: Now, we desire to offer an objection to this question, on the ground that the same is incompetent, irrelevant and immaterial, calling for hearsay evidence outside of the presence of either one of these defendants.

“MR LAWSON: You understand, your Honor, this is impeaching testimony.

“THE COURT: The question you are going to ask her now is the same question you submitted to Mr. Holmes?

“MR. LAWSON: Yes, your Honor, the same question that was propounded to the witness Holmes. This is purely for the purpose of impeachment.

“THE COURT: Under those circumstances, Mr. Dominguez, what objection have you got?

“MR. DOMINGUEZ: None. I didn't know his explanation - -

“THE COURT: All right.

“MR. DOMINGUEZ: Of what he intended to do.

“Q BY MR LAWSON: Mr. Holmes stated, or asked you, Mrs. Holmes, if you remembered a Sunday last February when Mr. Proffitt was at your house, and if you, Mrs. Holmes said, ‘Do you mean the Sunday that Hill and Proffitt came while I was taking Hazel to Sunday-school?’ Then Mr. Holmes said, ‘That is the Sunday that I mean, but Hill was not with Proffitt.’ Then you, Mrs. Holmes, said, ‘Yes, he was. Don't you remember you told me that that was Hill? And I afterwards told you that Mrs. Merry said, after I described him to her, that he was the same man who came to borrow a gun while we were at Pasadena with the Kesters.’ Then Mr. Holmes said to you, Mrs. Holmes, ‘No, Hill was not there.’ Then you, Mrs. Holmes, said, ‘He certainly was.’ Then Mr. Holmes said, ‘Well, if he was, I didn't know it. I certainly did not see him.’ And then Mr. Holmes further said, ‘It will be a good thing for you to forget it if you saw him, for Hill is trying to prove that he was sick in bed at the time that they were supposed to have held up those Chinamen.’ And then Mr. Holmes further said,

“THE COURT. The objection will be overruled. Proceed.

“Q BY MR. LAWSON: Just go on now, if there is anything else.

“A What I mean by ‘six or eight years,’ I don’t think they have ever been pulled down but twice since we are married, and that was twice since this supposed hold-up has happened.

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“THE COURT: All right.

“MR. DOMINGUEZ: Of what he intended to do.

“Q BY MR LAWSON: Mr. Holmes stated, or asked you, Mrs. Holmes, if you remembered a Sunday last February when Mr. Proffitt was at your house, and if you, Mrs. Holmes said, ‘Do you mean the Sunday that Hill and Proffitt came while I was taking Hazel to Sunday-school?’ Then Mr. Holmes said, ‘That is the Sunday that I mean, but Hill was not with Proffitt.’ Then you, Mrs. Holmes, said, ‘Yes, he was. Don't you remember you told me that that was Hill? And I afterwards told you that Mrs. Merry said, after I described him to her, that he was the same man who came to borrow a gun while we were at Pasadena with the Kesters.’ Then Mr. Holmes said to you, Mrs. Holmes, ‘No, Hill was not there.’ Then you, Mrs. Holmes, said, ‘He certainly was.’ Then Mr. Holmes said, ‘Well, if he was, I didn't know it. I certainly did not see him.’ And then Mr. Holmes further said, ‘It will be a good thing for you to forget it if you saw him, for Hill is trying to prove that he was sick in bed at the time that they were supposed to have held up those Chinamen.’ And then Mr. Holmes further said,

'It may be that you will be called on to be a witness. They had me down there today, and if you are called you just forget that you saw Hill.'

"Now, did that conversation take place between you and Mr Holmes at that time and place?"

"A Yes, sir.

"Q In the presence of you and Mr Holmes?"

"A Yes sir.

"THE COURT: She stated the presence.

"Q BY MR LAWSON: Now, Mrs Holmes, on the same evening of May 29th, on Thursday night, at your home, in the city of Los Angeles, I will ask you if this conversation did not take place between you and Mr Holmes, you two being the only parties present at that time. I might further say, did you have a conversation at that time in the house?"

"A Yes sir.

"Q I will ask you if this is the conversation that took place at that time: You, Mrs Holmes, stated to Mr Holmes that 'You were mixed up with this man Proffitt in opium deals.' And further said, 'Well, I have tried to get you to stay away from them and not mix into police affairs enough, and if you had been at home when you should have been, you would not have had it to say, that is, to testify.' Then Mr Holmes said, 'I never was mixed up or had anything to do with them.' Then you, Mrs Holmes, said, 'You certainly did. You seem to know all about that fellow you call Nigger Baptieste.' And then Mr Holmes said, 'I did not.' Then you, Mrs Holmes, further said to him,



‘Well, I suppose you have forgotten that you told Mr and Mrs Schlotzhauer and Mr and Mrs Kunkel and myself, that the Nigger’s car that the Government was looking for was at your shop, and that they were looking for it all over, and that you knew that there was opium hid in it, and you hadn’t looked for it yet, but was pretty sure there was a secret place in the car where the stuff was hid.’ Then Mr Holmes said, ‘You are driving me crazy; you always misinterpret things so.’ And then Mr Holmes said to you, ‘I told you that the car was in the shop and the Government had looked for it.’ Then Mr Holmes said this to you, ‘The car was in the shop, yes, and the Government had looked for it, but I never mentioned opium.’ Then you said to Mr Holmes, ‘You certainly did; and if they ask me to testify, I will ask Grace and Addie, and I bet they will remember it.’ And then you further said to Mr Holmes, ‘What about Cockeye Smith? I guess you forget about telling me that you were going to San Diego with the sheriff to get him. And when you got back you told me that you had found him, and had come back by way of Seal Beach, and that you had dinner there about three o’clock; and that you lied to me - - you went to San Diego with a couple of women, and I suppose another man.’ Then Mr Holmes said, ‘I didn’t’, then you said, ‘You did.’ Then Mr Holmes said, ‘Well, who told you? Addie?’ Then you said, ‘No, he did not, and it is none of your business who did, but I know you did.’ And then Mr Holmes further said, well, there were two women in the crowd,

but they were not with me; they were with the other fellows.' Then you said to Mr Holmes, 'I suppose you played chauffeur.' Then Mr Holmes said, 'Well, you are always picking fights with me. What have I done to bring this on?' Then you said to Mr Holmes, 'I am not fighting but want you to understand that I won't lie for you or anybody else.' Then Mr Holmes said, 'I don't want you to, nor nobody asked you to.' Then you said to Mr Holmes, 'You certainly did just a few minutes ago. You asked me to forget that Mr Hill was in the car with Mr Proffitt. I want you to understand that I won't lie. If I am called on to be a witness I will tell the truth if I can remember and be sure, and if I don't remember, I will say so.' Then Mr Holmes said, 'Well, is there anything good left of me?' And you said to Mr Holmes, 'Yes, there is. You are the best hearted fellow that ever lived.' And Mr Holmes said, 'Is that all?' Then you said, 'When I said that, I mean the bottom of everything. If you would stay at home with your family and go out with decent people and treat my friends as you should everything would go all right every way; but as long as you go with a crowd like you have been, and have nothing to do with your family, you can never expect to be happy, for nobody can make you happy, me or any other woman.' Then Mr Holmes said, 'Don't worry, there will never be any other woman with me.' Then Mr Holmes said, 'I only hope that I can fix things inside of thirty day so that my children will never have to go without, and I will get out of the way. There is only

one person that I know I can trust, and that is God.' And then you said, 'You had better not be so sure of it, the way you have been living.' Then Mr Holmes said, 'Nellie, I had a nice surprise for you. Do you know what I am thinking of?' Then you said, 'No.' Then Mr Holmes said, 'Are you sure?' Then you said, 'Why, yes.' Then Mr Holmes said, 'Well, I don't know whether to tell you, or not, but I believe I will.' Then Mr Holmes further said, 'I was going to surprise you by putting you in your own home inside of three months from now. I have had a big business proposition offered me, and it is still hanging fire, but if it goes through the least that I will make the first year will be \$20,000, and I am still in debt to Charlie Gorton five thousand or seven thousand dollars. I am paying him when I can. And I was going to try to have you in your own home in about three months from now.' Then Mr Holmes further said he had changed the combination on the safe at the shop, because he couldn't trust Eddie Menier, his foreman, because small amounts of money had been missed, and also a book of Stevens-Duryea parts and a list of Stevens-Duryea owners which he thought Eddie probably had taken, as he was considering going into business for himself.

"Now, did that conversation take place at that time?"

"A Yes sir.

"MR DOMINGUEZ: Just a moment. To which we object on the ground that the same is incompetent, irrelevant and immaterial, calling for hearsay, not tend-

ing to prove or disprove any issues in this case, the question asked, and the statement made being purely on collateral matters, and not impeaching or tending to impeach the witness Holmes in any matter to which he testified in this case, bearing upon the issues in the case.

“THE COURT: Now, if Mr Holmes had this conversation with this witness, he was interesting himself in the trial of this case, and I think for that reason it is relevant, if that is your only objection.

“MR DOMINGUEZ: All the objections that I made, if your Honor please, are in the record. It is incompetent, irrelevant and immaterial and calls for hearsay.

“THE COURT: The objection will be overruled.

“MR DOMINGUEZ: Yes sir. Exception.

“THE COURT: What is your answer?

“THE WITNESS: Yes sir.

“MR DOMINGUEZ: May I at this time, with your Honor’s permission, object to your Honor’s statement that the witness Holmes had an interest in this case?

“THE COURT: No, I did not say that.

“MR DOMINGUEZ: Well, pardon me.

“THE COURT: I said if he stated these things to this witness, it will show that he had interested himself.

“MR DOMINGUEZ: Pardon me, then, if your Honor please.

“THE COURT: That he had interested himself in this case.

“MR LAWSON: You may cross-examine.”

IV.

The Court erred in rendering its judgment in this cause against the defendant, for the reason that the indictment in said cause does not charge the defendant with any offenses against or in violation of the laws of the United States of America.

V.

The Court erred in rendering its judgment in this cause against this defendant, for the reason that the evidence introduced in the trial of said cause was not sufficient to justify the verdict of the jury therein, or the judgment of the Court against the defendant.

VI.

The Court erred in rendering its judgment in this cause against this defendant, for the reason that the testimony did not show or tend to show that the defendant had committed any offense set out, or attempted to be set out, in the indictment.

VII.

The Court erred in rendering its judgment in this cause against the defendant, for the reason that the testimony introduced at the trial of said cause did not tend to connect the defendant with the commission of any offense set out in the indictment.

VIII.

The Court erred as a matter of law in denying the defendant's motion for a new trial, to which ruling the exception of the defendant was duly taken and allowed.

## IX.

The Court erred as a matter of law in denying the defendant's motion in arrest of judgment, to which ruling the exception of the defendant was duly taken and allowed.

Frank E. Dominguez  
Milton M. Cohen  
Attorneys for defendant, Howard J.  
Proffitt.

And upon the foregoing assignment of errors and upon the record in said cause, the defendant, Howard J. Proffitt, prays that the verdict and judgment rendered therein may be reversed.

Dated this 16th day of June, 1919.

Frank E. Dominguez  
Milton M. Cohen  
Attorneys for defendant, Howard J.  
Proffitt.

We hereby certify that the foregoing assignment of errors is made in behalf of the petitioner for writ of error, and is in our opinion well taken, and the same now constitutes the assignment of errors upon the writ prayed for.

Frank E. Dominguez  
Milton M. Cohen  
Attorneys for defendant, Howard J.  
Proffitt.

[Endorsed]: ORIGINAL No. 1721 CRIM. In the United States District Court Southern District of

California Southern Division UNITED STATES OF AMERICA, *Plaintiff vs.* HOWARD J. PROFFITT, et al., *Defendants* ASSIGNMENT OF ERRORS FILED JUN 17 1919 *Chas. N. Williams, Clerk* Ernest J. Morgan *Deputy* FRANK E. DOMINGUEZ MILTON M. COHEN Attorneys for Defendant, HOWARD J. PROFFITT.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

. . . . .

UNITED STATES OF ) No. 1721 Crim.  
AMERICA, )  
Plaintiff, )  
-vs- ) BOND PENDING  
HOWARD J. PROFFITT, ) DECISION UPON  
et al, ) WRIT OF ERROR.  
Defendants. )

KNOW ALL MEN BY THESE PRESENTS:

That we, Howard J. Proffitt, of the County of Los Angeles, State of California, as principal, and National Surety Company of ~~New York~~, a corporation incorporated under the laws of the State of New York and authorized to do business in the State of California, as surety, are jointly and severally held and firmly bound unto the United States of America, in the full and just sum of Three Thousand — Dollars (\$3000.00) to be paid to the said United States of

